

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CAPITOL WEST APPRAISALS, LLC, on
behalf of itself and all others similarly situated,

Plaintiff,

v.

COUNTRYWIDE FINANCIAL CORP.;
COUNTRYWIDE BANK, N.A.;
COUNTRYWIDE HOME LOANS, INC.;
LANDSAFE, INC., BANK OF AMERICA,
N.A., and LANDSAFE APPRAISAL
SERVICES, INC.

Defendants.

No. 2:08 cv-01520 RAJ

**SECOND AMENDED CLASS ACTION
COMPLAINT**

Jury Trial Demanded

SECOND AMENDED CLASS ACTION COMPLAINT
Case No. 2:08-cv-01520 RAJ

010076-11 339751 V1



HAGENS BERMAN
SOBOL SHAPIRO LLP

1301 FIFTH AVENUE, SUITE 2900 • SEATTLE, WA 98101
TELEPHONE (206) 623-7292 • FACSIMILE (206) 623-0594

TABLE OF CONTENTS

	<u>PAGE</u>
I. NATURE OF THE ACTION	1
II. JURISDICTION AND VENUE	4
III. THE PARTIES.....	5
IV. SUBSTANTIVE ALLEGATIONS	7
A. The Plaintiff	7
B. The Appraisal Business.....	7
C. Federal Law Requires Appraisal Independence	8
D. Countrywide's Broad Scheme to Boost Loan Production	12
1. The Countrywide Brokerage Network.....	15
2. Countrywide's Inducement of Brokers to Direct Borrowers Towards Subprime Loans	17
3. Subprime Loans are More Lucrative to Countrywide	18
E. Countrywide Corrupts the Appraisal System	21
1. Countrywide's inflated appraisals.....	21
2. The blacklisting of honest appraisers.....	22
3. LandSafe Also Blacklists or Excludes Honest Appraisers	27
F. The Impact of Countrywide's Unlawful Conduct on Capitol West	28
G. Wade Massey of Capitol West Appraisals was Denied Fair Procedure	28
1. Upper Fitchs Point Rd. Appraisal	29
2. Rioja Street Appraisal	31
H. Another Example of the Blacklist Scheme	35
I. Stock Sales of Mozilo and Sambol	38
J. Governmental Actions Relating to Countrywide's Practices	38
V. CLASS ACTION ALLEGATIONS	39

1	A.	Class Definition	39
2	B.	Numerosity.....	40
3	C.	Commonality.....	40
4	D.	Typicality	40
5	E.	Adequacy	41
6	F.	The Prerequisites to Maintaining a Class Action for Injunctive Relief are Readily Apparent.....	41
7			
8	G.	Common Questions Predominate, and the Class Action Device Is Superior	41
9	VI.	FRAUDULENT CONCEALMENT; TOLLING; ESTOPPEL.....	42
10	VII.	CAUSES OF ACTION	42
11		FIRST CAUSE OF ACTION: VIOLATION OF 18 U.S.C. § 1962(c)(d)	42
12	A.	The Enterprises	43
13	1.	The Countrywide Brokerage Enterprise	43
14	2.	Alternative Enterprise Allegations: The Countrywide Enterprise	45
15			
16	B.	The Defendants' Use of the U.S. Mails and Interstate Wire Facilities	47
17	C.	Conduct of the RICO Enterprises' Affairs.....	50
18	D.	The Defendants' Pattern of Racketeering Activity	50
19	E.	Damages Caused by the Defendants' Scheme.....	51
20		SECOND CAUSE OF ACTION: VIOLATION OF AND CONSPIRACY TO VIOLATE COMMON LAW DUTY TO PROVIDE FAIR PROCEDURES, AGAINST COUNTRYWIDE AND BANK OF AMERICA	51
21			
22		THIRD CAUSE OF ACTION: INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AGAINST COUNTRYWIDE	56
23		PRAYER FOR RELIEF	58
24		JURY DEMAND.....	59
25			
26			

1 Plaintiff Capitol West Appraisals, LLC ("Plaintiff"), by and through its attorneys, on
2 behalf of itself and all others similarly situated, brings this Class Action Complaint against
3 Defendants and alleges, based upon personal knowledge as to its own acts, and as to all other
4 matters upon information and belief, as follows:

5 **I. NATURE OF THE ACTION**

6 1. The independence and integrity of the real estate appraisers who determine the
7 value of home loan collateral is vitally important. Appraisals are intended to provide borrowers
8 and lenders with an independent and accurate assessment of the true value of the property
9 underlying a loan.

10 2. Federal and state laws exist to protect the integrity of the appraisal process so that
11 appraisers can provide borrowers and lenders with an independent and accurate assessment of
12 the value of a home. Lenders are prohibited from pressuring appraisers into compromising their
13 independence and producing a report that is not based on the appraiser's objective opinion.

14 3. Countrywide embarked on a corporate strategy to underwrite as many loans as
15 possible, including loans that were subprime loans and otherwise did not meet underwriting
16 standards. Subprime loans have meant that Countrywide has made higher profits in interest
17 rates, in origination fees and other fees, and in packaging the mortgage-backed securities that are
18 at the heart of the financial woes now plaguing our economy. Countrywide has steered many
19 borrowers into subprime loans when they have qualified for conventional financing with lower
20 rates.

21 4. Countrywide, through misrepresentations from standardized sales scripts,
22 standardized training of brokers and loan officers, standardized omissions of crucial information
23 necessary for borrowers to make informed financial choices and incentive programs – which
24 included perks such as all-expense-paid trips to Las Vegas – has induced brokers and loan
25 officers to push subprime loans or otherwise tainted loans or non-qualifying loans as a matter of
26 standard policy and practice without determining the suitability or unsuitability of the loan for

1 the borrower, as well as standardized omissions of crucial information necessary for borrowers to
2 make informed financial choices, and other systemic, standardized practices employed by
3 Defendants.

4 5. As set forth in a recent decision by the Honorable Mariana R. Pfaelzer, in *In re*
5 *Countrywide Fin. Corp. Derivative Litig.*, 554 F. Supp. 2d 1044, 1059 (C.D. Cal. 2008)
6 (hereinafter the “Derivative Action Order”), “The lowest level [Countrywide] employees report
7 [in the Derivative Action complaint] that the impetus to ‘push’ loans through came from
8 above.... They also allege that the compensation structure promoted these practices by
9 rewarding Company employees – from executives and management down to the underwriters –
10 for increasing loan volume, but not for generating quality loans.” As the Derivative Action
11 Order also noted, Countrywide executives concealed this scheme to increase loan volume
12 irrespective of the suitability of the loans to the borrowers. *Id.* at 1058.

13 6. As part of its corporate objective to abandon underwriting standards in order to
14 maximize market share and profits, Countrywide, the largest mortgage lender in the United
15 States, engaged in a practice of pressuring and intimidating appraisers into using appraisal
16 techniques that meet Countrywide’s business objectives even if the use of such appraisal
17 technique is improper and in violation of industry standards. If appraisers fail to “play ball” as
18 Countrywide demands, Countrywide places the appraiser on a “Field Review List,” or an
19 Exclusionary List. Countrywide and LandSafe’s conduct in this regard is fraudulent because
20 they falsely state defects in appraisers’ reports as a basis for being placed on an Exclusionary
21 List. Being placed on the Field Review List is tantamount to being “blacklisted,” as
22 Countrywide will no longer accept appraisals from persons and companies appearing on this list
23 unless the appraisals are accompanied by a “Field Review” from another appraiser. Because
24 loan mortgage brokers, which hire the appraisers, will not pay for two appraisals, being placed
25 on the Field Review List means that the appraiser will no longer be retained to review properties
26 on which Countrywide is the lender. As a practical result, mortgage brokers do not know if



1 Countrywide will be the eventual lender on a property so mortgage brokers simply will not use
2 blacklisted appraisers – period. Thus, given Countrywide’s enormous size and clout in the
3 mortgage market, appraisers appearing on the Field Review List lose substantial revenue – all
4 because they refused to compromise their integrity and violate their industry standards at
5 Countrywide’s insistence. In essence, being on the blacklist is a virtual death knell for an
6 appraiser who will not do business the Countrywide way, *i.e.*, illegally.

7 7. When Countrywide finds an appraiser who refuses to violate industry standards,
8 or whom it just does not like, or who will not accept Countrywide’s cut-rate fee payments for
9 appraisals, Countrywide uses its enforcement arm, its subsidiary LandSafe, to cut off the
10 offending appraiser. As part of the scheme, LandSafe performs a “field review” of the appraisers
11 who submit an offending appraisal. As part of the Countrywide-LandSafe scheme, LandSafe
12 then completes an appraisal that comes out where Countrywide or LandSafe wants it to be. The
13 phony appraisals are then used to complete the loan and the offending appraiser is blacklisted, on
14 the fraudulent grounds the prior appraisal was inadequately performed. The acts of pretextually
15 placing appraisers on an Exclusionary List are thus fraudulent, and the communications
16 undertaken to do so are false statements by Countrywide and by LandSafe. The names of
17 blacklisted appraisers are transmitted to Countrywide and LandSafe’s extensive network of
18 brokers – sounding the death knell for honest appraisers.

19 8. When Countrywide removes appraisers from the list of approved appraisers, it
20 routinely does not provide any notice to the appraisers that they have been removed from that
21 list. Countrywide provides no meaningful opportunity to rebut the exclusion. As a result,
22 appraisers frequently do not even know that they have been placed on an exclusionary list. If
23 Countrywide and LandSafe give notice that an appraiser has been placed on the exclusionary list,
24 the notice is always cursory and fails to provide sufficient detail for the appraiser to know the
25 basis for the removal. The notices are false statements by Countrywide and LandSafe because
26 they falsely report deficiencies in appraisal reports. If an appraiser realizes that he or she has

1 been placed on the exclusionary list– either through a cursory notice or after realizing that he or
2 she is no longer receiving business from Countrywide – and then inquires about no longer
3 receiving work, Countrywide and LandSafe do not give the appraiser meaningful information
4 and do not give the appraiser an opportunity to seek relief from being blacklisted.

5 9. This lack of notice and meaningful opportunity to contest the exclusion violates
6 state and federal law which requires such notice. It is also fraudulent conduct based upon false
7 statements made to appraisers by Countrywide and LandSafe.

8 10. Defendants’ conduct violates, among other laws, the federal Racketeering
9 Influenced and Corrupt Practices Act and state law. Countrywide and LandSafe have caused
10 substantial damage to thousands of appraisers across the United States, in addition to distorting
11 real estate prices in the marketplace. Therefore, this suit is necessary to stop Countrywide and
12 LandSafe’s unlawful behavior and to compensate appraisers that were subject to Countrywide’s
13 unlawful scheme.

14 II. JURISDICTION AND VENUE

15 11. This Court has subject-matter jurisdiction over this class action pursuant to the
16 Class Action Fairness Act of 2005, which confers federal jurisdiction over class actions where,
17 as here, “any member of a class of plaintiffs is a citizen of a State different from any
18 Defendants” and the aggregated amount in controversy exceeds five million dollars
19 (\$5,000,000). *See* 28 U.S.C. §§ 1332(d)(2) and (6). This Court has personal jurisdiction over
20 the parties because Plaintiff submits to the jurisdiction of the Court and Defendants
21 systematically and continually conduct business throughout the State of Washington.

22 12. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c). Many of
23 the acts and transactions giving rise to the violations of law complained of herein occurred in this
24 District.

1 13. Much of Defendants' activities and operations have been performed in this
 2 District, and Defendants maintain many offices in this District, including at the following
 3 locations:

4 810 Alabama Street	221 A Street, Ste #4	11555 SE 8th St, Ste 101
5 Bellingham, WA 98225	Eastsound, WA 98245	Bellevue, WA 98004
6 200 112th Ave NE	Bellevue Place	2210 Riverside Drive
7 Suite 210	10500 NE 8th St, Ste 1760	Suites 110&120
8 Bellevue, WA 98004	Bellevue, WA 98004	Mt. Vernon, WA 98273
9 1 Front Street, Ste E-2	1645 140th Ave NE, Ste A3	1200 Third Ave. Suite 100
10 Friday Harbor, WA 98250	Bellevue, WA 98005	Seattle, WA 98101
11 3400 188th St., Suite 101	2103 NE 129th St, Suite 201	8525 120th Ave NE
12 Lynnwood, WA 98037	Vancouver, WA 98686	Kirkland, WA 98275
13 Eastlake Center	Westgate North Shopping	Westwood Village
14 2825 Eastlake Ave E,	Center	2515 SW Trenton Street
15 Suite 305	2631 N Pearl St	Suite 103
16 Seattle, WA 98102	Tacoma, WA 98407	Seattle, WA 98126
17 Greentree Plaza	5500 Olympic Drive	Lakewood Pavilion
18 305 SE Everett Mall Wy #21	Suite H-103	5700 100th St SW, Ste 550
19 Everett, WA 98208	Gig Harbor, WA 98335	Lakewood, WA 98499
20 Rainier Professional Plaza	32001 32nd Avenue S	Cooper Point Pavilion
21 18209 ST Hwy 410 E, #302	Suite 110	1520 Cooper Pt Rd SW #350
22 Bonney Lake, WA 98391	Federal Way, WA 98001	Olympia, WA 98502
23 The Clocktower at Town	Vancouver Center North	Triangle Landing
24 Center	Office Tower	1208 Washington Way
25 15021 Main St, Ste C	700 Washington St Ste 201	#140,150
26 Mill Creek, WA 98012	Vancouver, WA 98660	Longview, WA 98632
350 North East 4th Ave	The Western Creek Building	
Camas, WA 98607	5001 25th Ave NE, Ste 201	
	Seattle, WA 98105	

III. THE PARTIES

14. Plaintiff Capitol West Appraisals, LLC ("Capitol West") is an Idaho limited
 liability company with its principal place of business in Boise, Idaho. Capitol West is in the
 business of providing real estate appraisals to mortgage brokers and mortgage lenders.



1 15. Defendant Countrywide Financial Corp. (“Countrywide Financial”) is a Delaware
2 corporation headquartered at 4500 Park Granada, Calabasas, California 91302. Countrywide
3 Financial is engaged in mortgage lending and other real estate finance-related businesses,
4 including mortgage banking, banking and mortgage warehouse lending, dealing in securities and
5 insurance underwriting.

6 16. Defendant Countrywide Bank, N.A. (“Countrywide Bank”) is a national banking
7 association headquartered at 1199 North Fairfax Street, Suite 500, Alexandria, Virginia 22314.
8 Countrywide Bank is a subsidiary of Countrywide Financial and funds loans for Countrywide
9 Financial’s mortgage banking segment.

10 17. Defendant Countrywide Home Loans, Inc. (“Countrywide Home Loans”) is a
11 New York corporation headquartered at 4500 Park Granada Blvd, Calabasas, California 91302.
12 Countrywide Home Loans is a subsidiary of Countrywide Financial and engages in the business
13 of originating mortgage loans.

14 18. Collectively, these entities are referred to as “Countrywide.”

15 19. Defendant Bank of America, N.A. (“B of A”) is headquartered in Charlotte, North
16 Carolina. B of A acquired Countrywide on August 23, 2007 and now operates Countrywide’s
17 mortgage business under the banner Bank of America Home Loans.

18 20. Defendant LandSafe, Inc. (“LandSafe”) is a Delaware corporation headquartered
19 at 6400 Legacy Drive, Plano, Texas 75024. LandSafe is a subsidiary of Countrywide Financial,
20 and provides loan closing products and services such as credit reports, appraisals, property
21 valuation services and flood determinations.

22 21. Defendant LandSafe Appraisal Services, Inc. (“LandSafe Appraisal”) is a
23 California corporation headquartered at 6400 Legacy Drive, Plano, Texas 75024. LandSafe
24 Appraisal is a subsidiary of Countrywide Financial, and offers appraisal services in connection
25 with mortgage loan closings.

26 22. Collectively, LandSafe and LandSafe Appraisal are referred to as LandSafe.

IV. SUBSTANTIVE ALLEGATIONS

A. The Plaintiff

23. Plaintiff Capitol West is an independent appraiser serving the 18 counties in Idaho. Capitol West has been in business since 2005.

24. Capitol West has historically conducted appraisals for area mortgage brokers and major mortgage lenders such as Countrywide, Wells Fargo, Washington Mutual and others. Due to its experience and expertise, Capitol West is a “review appraiser” for Wells Fargo, WAMU and others.

25. Wade Massey is the owner and head appraiser at Capitol West. Wade Massey has worked as a certified residential appraiser since 2006. Mr. Massey completes appraisals for brokers, lenders, and Appraisal Management Companies. He has satisfied all education and continuing education requirements for the Appraisal Institute of the State of Idaho. He has also been approved by the Department of Housing and Urban Development to perform Federal Housing Administration appraisals. Mr. Massey, as described below, has been blacklisted by Countrywide and Bank of America.

B. The Appraisal Business

26. An appraiser is most commonly retained by a mortgage broker or mortgage lender in order to value the property that will be used as the collateral to make sure that the property’s value actually reflects the estimated opinion of market value or refinance value. This helps ensure that the loan is adequately collateralized in case the borrower defaults.

27. Among other things, an appraiser typically performs a physical inspection of the property and takes inventory of the number of rooms and square footage and assesses the overall condition of the property. The appraiser also reviews recent property sales that the appraiser believes are comparable to the property being studied, and these “comps” serve as value benchmarks with which to compare the proposed purchase price for the property.

1 28. After the appraiser has concluded his or her review, the appraiser typically
2 provides the mortgage broker or lender with a report that either estimates the value of the
3 property or confirms or challenges the sale price agreed to between the buyer and the seller.

4 29. Appraisers either work “in house” as part of the broker’s or lender’s own
5 operations or work as independent contractors. In the latter case, the appraiser builds a book of
6 business by servicing as many mortgage brokers and lenders in a given geographic region as
7 possible.

8 30. These brokers and lenders are the “lifeblood” of the appraiser’s revenue. Without
9 their business, an appraiser cannot operate.

10 **C. Federal Law Requires Appraisal Independence**

11 31. Because of the importance of appraisals in the home lending market, state and
12 federal statutes and regulations require that appraisals be accurate and independent. The
13 Uniform Standards of Professional Appraisal Practice (“USPAP”), incorporated into federal law,
14 12 C.F.R. § 34.44, require appraisers to conduct their appraisals independently: “An appraiser
15 must perform assignments with impartiality, objectivity, and independence, and without
16 accommodation of personal interests. In appraisal practice, an appraiser must not perform as an
17 advocate for any party or issue.” USPAP Ethics Rule (Conduct). USPAP rules also provide that
18 “[a]n appraiser must not accept an assignment that includes the reporting of predetermined
19 opinions and conclusions.” In addition, each appraisal report must contain a certification signed
20 by the appraiser, stating that his or her compensation for completing the assignment is not
21 contingent upon the development or reporting of a predetermined value or direction in value that
22 favors the cause of the client.

23 32. USPAP is incorporated into federal law by 12 C.F.R. § 34.44, and federal law sets
24 independence standards for appraisers involved in federally-regulated transactions. *See* 12
25 U.S.C. §§ 3331, *et seq.* The Code of Federal Regulations provides that an in-house or “staff”
26 appraiser at a bank “must be independent of the lending, investment, and collection functions and

1 not involved, except as an appraiser, in the federally related transaction, and have no direct or
 2 indirect interest, financial or otherwise, in the property.” 12 C.F.R. § 34.45. For appraisers who
 3 are independent contractors or “fee” appraisers, the regulation states that “the appraiser shall be
 4 engaged directly by the regulated institution or its agent, and have no direct or indirect interest,
 5 financial or otherwise, in the property transaction.” 12 C.F.R. § 34.45.

6 33. Because of the importance of appraisals in the home lending market, state and
 7 federal statutes and regulations require that appraisals be accurate and independent. USPAP,
 8 which is incorporated into California law, Cal. Code Reg., Title 10, § 3701, requires appraisers
 9 to conduct their appraisals independently: “An appraiser must perform assignments with
 10 impartiality, objectivity, and independence, and without accommodation of personal interests. In
 11 appraisal practice, an appraiser must not perform as an advocate for any party or issue.” USPAP
 12 Ethics Rule (Conduct). USPAP rules also provide that “[a]n appraiser must not accept an
 13 assignment that includes the reporting of predetermined opinions and conclusions.” In addition,
 14 each appraisal report must contain a certification signed by the appraiser, stating that his or her
 15 compensation for completing the assignment is not contingent upon the development or reporting
 16 of a predetermined value or direction in value that favors the cause of the client. The Director of
 17 California’s Office of Real Estate Appraisers may “issue a citation, order of abatement, assess a
 18 fine or private or public reproof, suspend or revoke any license, and/or may deny the issuance or
 19 renewal of a license of any person who has ... [v]iolated any provision of USPAP.” Cal. Code
 20 Reg., Title 10, § 3721(6).

21 34. California Civil Code section 1090.5(a) states, “No person with an interest in a
 22 real estate transaction involving an appraisal shall improperly influence or attempt to improperly
 23 influence, through coercion, extortion, or bribery, the development, reporting, result, or review
 24 of a real estate appraisal sought in connection with a mortgage loan.” And section 1090.5(c)
 25 states, “If a person who violates this section is licensed under any state licensing law and the
 26 violation occurs within the course and scope of the person’s duties as a licensee, the violation



1 shall be deemed a violation of that state licensing law.” Further, California Business and
 2 Professions Code section 11323 states, “No licensee shall engage in any appraisal activity in
 3 connection with the purchase, sale, transfer, financing, or development of real property if his or
 4 her compensation is dependent on or affected by the value conclusion generated by the
 5 appraisal.”

6 35. California’s Department of Financial Institutions sent out a notice on February 4,
 7 2009, stating that it “is the jointly held intention of the Commissioners of the Department of Real
 8 Estate (DRE), the Department of Corporations (DOC), the Department of Financial Institutions
 9 (DFI), as well as the Director of the Office of Real Estate Appraisers (OREA), to provide
 10 outreach to their respective licensees for the purpose of informing those licensees that the
 11 following acts may constitute evidence of a violation of California law, and Civil Code section
 12 1090.5 in particular, and should be avoided when engaging the services of a licensed real estate
 13 appraiser.” The notice further states that the unlawful acts include “allowing the removal of an
 14 appraiser from a list of qualified appraisers, or the addition of an appraiser to an exclusionary list
 15 of disapproved appraisers, used by any entity, without prior written notice to such appraiser,
 16 which notice shall include written evidence of the appraiser’s illegal conduct, a violation of the
 17 Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards,
 18 substandard performance, improper or unprofessional behavior or other substantive reason for
 19 removal.”

20 36. Federal law sets independence standards for appraisers involved in federally-
 21 regulated transactions. *See* 12 U.S.C. §§ 3331, *et seq.* The Code of Federal Regulations
 22 provides that an in-house or “staff” appraiser at a bank “must be independent of the lending,
 23 investment, and collection functions and not involved, except as an appraiser, in the federally
 24 related transaction, and have no direct or indirect interest, financial or otherwise, in the
 25 property.” 12 C.F.R. § 34.45. For appraisers who are independent contractors or “fee”
 26 appraisers, the regulation states that “the appraiser shall be engaged directly by the regulated



1 institution or its agent, and have no direct or indirect interest, financial or otherwise, in the
2 property transaction.” 12 C.F.R. § 34.45.

3 37. In 2005, federal regulators, including the Office of Thrift Supervision (“OTS”),
4 published “Frequently Asked Questions on the Appraisal Regulations and the Interagency
5 Statement on Independent Appraisal and Evaluation Functions.” With regard to appraisal
6 independence, the document highlighted the importance of independence and condemned
7 attempts to interfere therewith:

8 3. *Who should be considered the loan production staff for*
9 *purposes of achieving appraiser independence? Could*
loan production staff select an appraiser?

10 *Answer:* The loan production staff consists of those
11 responsible for generating loan volume or
12 approving loans, as well as their subordinates. This
13 would include any employee whose compensation
14 is based on loan volume. Employees responsible
for the credit administration function or credit risk
management are not considered loan production
staff. Loan production staff should not select
appraisers.

15 * * *

16 5. *When selecting residential appraisers, may loan production*
17 *staff use a revolving pre-approved appraiser list, provided*
the list is not under their control?

18 *Answer:* Yes, loan production staff may use a revolving,
19 board-approved list to select a residential appraiser,
20 provided the development and maintenance of the
list is not under their control. Staff responsible for
the development and maintenance of the list should
be independent of the loan production process. . . .
21 Further, there should be periodic internal review of
22 the appraiser selection process to ensure that
appropriate procedures are being followed and that
controls exist to ensure independence.

23 38. On its current website LandSafe recognizes the importance of “independent
24 appraisals”:

25 **Appraiser Independence**

26 The issue of appraiser independence is taken very seriously at

LandSafe. As a company, we are firmly committed to ensuring our operational environment enables you to make an independent judgment of value for every property you are assigned to appraise, absent undue influence. To reinforce our long-standing position on this important issue, we recently adopted a newly-stated internal policy on appraiser independence, which states:

“LandSafe Appraisal Services, Inc., an appraisal management company, is committed to providing a process through which its appraisers are able to provide their independent judgment for the property they are asked to appraise. LandSafe promotes and requires an operating environment for its appraisers that is consistent with the vision and requirements established by federal and state guidelines. The environment is designed to mandate independence and maintain an appraisal process that is free from undue influence.”

This policy is guided by the Federal Interagency Appraisal and Evaluation Guidelines (FIRREA) of 1994, as amended. These guidelines detail the need for the collateral evaluation function in the real estate loan process to be independent from the loan production function in federally regulated institutions.

Todd Baur, President and Chief Operating Officer, described appraisal independence for LandSafe as a fundamental principal that fosters an environment in which property value is assessed in its purest form.

[\[http://www.landsafe.com/landsafe/services/appraisal/index.html.\]](http://www.landsafe.com/landsafe/services/appraisal/index.html)

39. Because of the state and federal regulations requiring independence between loan production and appraisals, Countrywide created and separately incorporated LandSafe, rather than simply having it exist as a division of Countrywide.

D. Countrywide’s Broad Scheme to Boost Loan Production

40. The Scheme at issue is part of a larger scheme orchestrated by Countrywide’s CEO Angelo Mozilo and David Sambol. Their larger scheme was to drive up Countrywide’s revenues through an abandonment of prudent underwriting standards. The increase in revenues was engineered to drive up Countrywide’s stock price which in turn allowed these individuals to reap tremendous fortunes by selling massive amounts of Countrywide stock.

41. In 2004, Countrywide became the largest home mortgage lender in the United States, built on years of primarily offering customary fixed-rate mortgage loans to borrowers.

1 By that time, Countrywide, led by its CEO and founder Angelo Mozilo, was intent on elbowing
2 out competing lenders that tried to horn in on Countrywide's market share by originating more
3 exotic mortgage loans. As a result, Countrywide's mortgage portfolio – and lending standards –
4 changed dramatically.

5 42. From mid-2003 onward, Countrywide continually loosened its underwriting
6 guidelines to the point of nearly abandoning them by 2006. Countrywide's highest-level
7 managers authored official documents – underwriting matrices and guidelines – such as those for
8 Countrywide's Corresponding Lending Division (“CLD”) that memorialized Countrywide's
9 systematically lowered lending standards. Numerous Confidential Witnesses (“CWs”) from
10 different levels and involved in different aspects of the company corroborate the nature of
11 Countrywide's strategy shift. Chairman and CEO Angelo Mozilo's stated goal was to gain 30%
12 market share. To do so, he and other high-ranking executives at Countrywide ordered many of
13 the lowered standards.

14 43. Underwriting standards changed so much during the class period that, in
15 December 2007, Countrywide told reporters that billions of dollars of loans in 2005 and 2006
16 could not have been made under “new” guidelines.

17 44. Whereas in 2003, adjustable rate mortgages (“ARMs”) made up 18 percent of
18 Countrywide's portfolio, by 2004, the number of ARM loans increased dramatically, to 49
19 percent of all loans. Subprime loans rose from 4.6 percent to 11 percent of all loans during the
20 same period. By offering these loans, and other non-traditional loans like interest-only loans and
21 reduced documentation, Countrywide was not only able to maintain its marketshare, it also
22 earned a significant profit off of the higher commissions that borrowers paid and the higher
23 prices investors were willing to pay for these loans as securitized assets on the secondary market.

24 45. Countrywide originated, sold, and serviced both prime and subprime (which
25 Countrywide's periodic filings referred to as “nonprime”) mortgage loans. By 2005,
26 Countrywide was the largest U.S. mortgage lender in the United States, originating over \$490

1 billion in mortgage loans in 2005, over \$450 billion in 2006, and over \$408 billion in 2007.
2 Countrywide recognized pre-tax earnings of \$2.4 billion and \$2 billion in its loan production
3 divisions in 2005 and 2006, respectively, and a pre-tax loss of \$1.5 billion its loan production
4 division in 2007.

5 46. Countrywide pooled most of the loans it originated and sold them in secondary
6 mortgage market transactions. Countrywide sold the pooled loans either through whole loan
7 sales or securitization. In whole loan sales, Countrywide sold the loans to investors and recorded
8 gains on the sales. In securitizations, Countrywide sold interests in the pooled loans, *i.e.*,
9 mortgage-backed securities. Countrywide's loan sales were run out of its capital markets
10 division. In 2005, Countrywide reported \$451.6 million in pre-tax earnings from capital market
11 sales, representing 10.9% of its pre-tax earnings; in 2006, it recognized \$553.5 million in pre-tax
12 earnings from that division, representing 12.8% of its pre-tax earnings, and in 2007 it recognized
13 a mere \$14.9 million in pre-tax earnings from that division, reporting a pre-tax loss overall.

14 47. Historically, Countrywide's primary business had been originating prime
15 conforming loans that were saleable to the Government Sponsored Entities ("GSEs"). In the
16 fiscal years 2001, 2002, and 2003, Countrywide's prime conforming originations were 50%,
17 59.6%, and 54.2% of its total loan originations, respectively. In 2003, United States residential
18 mortgage production reached a record level of \$3.8 trillion. Countrywide experienced record
19 earnings in that year, with net earnings of \$2.4 billion, an increase of \$1.5 billion, or 182%, over
20 2002. In 2004, in a market where originations were declining overall, Countrywide maintained
21 net earnings of \$2.1 billion, and increased its market share from 11.4% to 12.7%.

22 48. Countrywide achieved this result in large part by moving away from its historical
23 core business of prime mortgage underwriting to aggressively matching loan programs being
24 offered by other lenders, even monoline subprime lenders. As a result, as reported in
25 Countrywide's periodic filings and reflected in the chart below, in 2004, 2005, and 2006,
26

Countrywide wrote more non-conforming, subprime, and home equity loans than in any prior period:

	2001	2002	2003	2004	2005	2006
Prime Conforming	50%	59.6%	54.2%	38.2%	32%	31.9%
Prime Non-Conforming	16.5%	24.5%	31.4%	38.7%	47.2%	45.2%
Home Equity	6.8%	4.6%	4.2%	8.5%	9.0%	10.2%
Nonprime (Subprime)	7.8%	3.7%	4.6%	11.0%	8.9%	8.7%
FHA/VA	18.9%	7.6%	5.6%	3.6%	2.1%	2.8%
Commercial	0.0%	0.0%	0.0%	0.0%	0.8%	1.2%

49. In 2004, Countrywide's reported production of conventional conforming loans dropped to 38.2%, its production of subprime loans had risen to 11%, its production of home equity loans had risen to 8.5%, and its production of conventional non-conforming loans had risen to 38.7%. By 2006, Countrywide had turned its prior business model on its head: a mere 31.9% of its originations were conforming, 45.2% were non-conforming, 8.7% were subprime, and 10.2% were home equity.

1. The Countrywide Brokerage Network

50. Countrywide also has made home mortgage loans arranged by its network of mortgage brokers. Brokers became authorized to become an approved Countrywide broker by submitting a Mortgage Broker Application and entering into a "Wholesale Broker Agreement" with Countrywide. These contracted brokers were provided access to Countrywide's CLUES™ computer system, which was designed to allow the mortgage broker to submit loan information and receive a qualified underwriting decision within minutes. The CLUES™ computer system purportedly automated the process of placing loans, and was pre-programmed to push as many borrowers as possible into risky subprime loans, irrespective of reasonable objective criteria that would indicate the appropriateness of such loans for a particular borrower.

1 51. Countrywide has incentivized its brokers to push subprime loans by offering
2 larger commissions on subprime loans than on prime loans, and by offering special perks, such
3 as all-expense-paid trips to Las Vegas, to brokers who successfully pushed a large number of
4 subprime loans onto borrowers. Countrywide's mortgage brokers have induced borrowers to
5 enter into loans via telemarketing and other sales efforts that have been carefully directed by
6 Countrywide. Those loans are made in reliance on Countrywide's credit-granting policies and
7 with the participation of Countrywide.

8 52. Countrywide has needed its network of authorized brokers to accomplish its
9 scheme, as Countrywide could not have reaped huge rewards from the securitization of its
10 subprime loans without a network of brokers across the country pushing borrowers into as many
11 subprime loans as they could. For instance, a single broker could never have generated the
12 volume of subprime loans needed to bundle the loans into securities, which is where the real
13 money lay for Countrywide. Countrywide has needed thousands of brokers to work with a single
14 goal in mind – to make as many subprime loans as possible to bundle and sell on the secondary
15 market, irrespective of their suitability for the borrowers.

16 53. Countrywide and its brokerage network shared the common purpose of
17 originating as many loans as possible, irrespective of suitability for the borrower, and the more
18 onerous the loan terms, the better. Through this common purpose, members of the brokerage
19 network received more money from Countrywide, and Countrywide made more money in the
20 secondary market by packaging and selling these loans.

21 54. This industry change has transformed incentives in such a manner that lenders
22 have often been less vigilant in accepting risky loans since the risk is quickly transferred to the
23 purchasers of the loans. The lender's interest in ensuring the accuracy of the appraisal backing
24 the loan is diminished. And because lenders' profits are determined by the quantity of loans that
25 they successfully close, and not the quality of those loans, the lender has an incentive to pressure
26



1 appraisers to reach values that will allow the loan to close – without regard to whether the
2 appraisal accurately reflects the home's actual value.

3 55. Independent mortgage brokers also make more money by closing a higher volume
4 of loans. Consequently, brokers have great incentive to make the loan documentation process
5 move as quickly and efficiently as possible and meet whatever demands and requirements that
6 lenders place on them. An independent mortgage broker is not tied to one particular lender. It
7 typically has relationships with multiple lenders in order to have as many options as possible to
8 service clients.

9 **2. Countrywide's Inducement of Brokers to Direct Borrowers Towards**
10 **Subprime Loans**

11 56. Countrywide's brokers and sales representatives have been rewarded for making
12 as many risky, high-cost loans as possible, pursuant to the Company's commission structure.

13 57. Even where borrowers qualify for prime loans, Countrywide improperly
14 incentivizes and encourages its brokers, through financial incentives, to move them into the
15 subprime category. For example, Countrywide has paid commissions on a subprime loan of
16 0.50% of the loan's value, while the commission on loans in the next highest category would be
17 a mere 0.20% of the loan's value.

18 58. In addition, mortgage brokers' commissions would vary on loans in which the
19 interest rate would increase after a short period with a low teaser rate; the higher the reset interest
20 rate, the greater the commission earned.

21 59. The addition of penalties to the terms of a loan has also been strongly encouraged
22 and incentivized by Countrywide. For example, on information and belief, adding a three-year
23 prepayment penalty to a loan would generate an extra 1% of the loan's value in a commission to
24 the salesperson. Nowhere, however, was this disclosed to prospective loan applicants.

25 60. Moreover, if a broker convinced a borrower to add a home equity line of credit to
26 their loan, the broker would earn an extra 0.25% commission.

61. A broker's inducing borrowers to take out subprime loans was even rewarded, in some instances, by perks such as all-expense-paid trips to Las Vegas and other places.

62. In addition to the foregoing, Countrywide has utilized computer software which prevented sales representatives from inputting a borrower's cash reserves when calculating the type of loan the borrower is eligible for, which has resulted in the sales representative pitching a higher cost loan. Countrywide has utilized this software in order to increase its own profit on such loans, since a borrower who has more assets would normally be able to obtain a lower interest rate on their loan.

3. Subprime Loans are More Lucrative to Countrywide

63. Defendants' deceptive scheme had one primary goal – to supply the secondary market with as many loans as possible, ideally loans that would earn the highest premiums. Over a period of several years, Defendants constantly expanded Countrywide's share of the consumer market for mortgage loans through a wide variety of deceptive practices, undertaken with the direction, authorization, and ratification of Sambol and Mozilo, in order to maximize its profits from the sale of those loans to the secondary market.

64. While Countrywide retained ownership of some of the loans it originated, it sold the vast majority of its loans on the secondary market, either as mortgage-backed securities or as pools of whole loans.

65. In the typical securitization transaction involving mortgage-backed securities, loans were "pooled" together and transferred to a trust controlled by the securitizer, such as Countrywide. The trust then created and sold securities backed by the loans in the pool. Holders of the securities received the right to a portion of the monthly payment stream from the pooled loans, although they were not typically entitled to the entire payment stream. Rather, the holders received some portion of the monthly payments. The securitizer or the trust it controlled often retained an interest in any remaining payment streams not sold to security holders. These



1 securitization could involve the pooling of hundreds or thousands of loans, and the sale of many
2 thousands of shares.

3 66. Countrywide generated massive revenues through these loan securitizations. Its
4 reported securities trading volume grew from \$647 billion in 2000, to \$2.9 trillion in 2003, \$3.1
5 trillion in 2004, \$3.6 trillion in 2005, and \$3.8 trillion in 2006. (These figures relate to the
6 ostensible values given to the securities by Countrywide or investors, and include securities
7 backed by loans made by other lenders and purchased by Countrywide.)

8 67. For the sale of whole (*i.e.*, unsecuritized) loans, Countrywide pooled loans and
9 sold them in bulk to third-party investors, often (but not exclusively) Wall Street firms. The sale
10 of whole loans generated additional revenues for Countrywide. Countrywide often sold the
11 whole loans at a premium, meaning that the purchaser paid Countrywide a price in excess of
12 100% of the total principal amount of the loans included in the loan pool.

13 68. The price paid by purchasers of securities or pools of whole loans varied based on
14 the demand for the particular types of loans included in the securitization or sale of whole loans.
15 The characteristics of the loans, such as whether the loans are prime or subprime, whether the
16 loans have an adjustable or fixed interest rate, or whether the loans include a prepayment
17 penalty, all influenced the price.

18 69. Various types of loans and loan terms earned greater prices, or “premiums,” in the
19 secondary market. For example, investors in mortgages and mortgage-backed securities have
20 been willing to pay higher premiums for loans with prepayment penalties. Because the
21 prepayment penalty deters borrowers from refinancing early in the life of the loan, it essentially
22 ensures that the income stream from the loan will continue while the prepayment penalty is in
23 effect. Lenders, such as Countrywide, typically sought to market loans that earned it higher
24 premiums, including loans with prepayment penalties.

1 70. In order to maximize the profits earned by the sale of its loans to the secondary
2 market, Countrywide's business model increasingly focused on finding ways to generate an ever
3 larger volume of the types of loans most demanded by investors.

4 71. Countrywide originated as many loans as possible not only to maximize its profits
5 on the secondary market, but to earn greater profits from servicing the mortgages it sold.
6 Countrywide often retained the right to service the loans it securitized and sold as pools of whole
7 loans. The terms of the securitizations and sales agreements for pools of whole loans authorized
8 Countrywide to charge the purchasers a monthly fee for servicing the loans, typically a
9 percentage of the payment stream on the loan.

10 72. Tantalized by the huge profits earned by selling loans to the secondary market,
11 Defendants constantly sought to increase Countrywide's market share: the greater the number
12 and percentage of loans it originated, the greater the revenue it could earn on the secondary
13 market. Countrywide executives, including defendant Mozilo, publicly stated that they sought to
14 increase Countrywide's market share to 30% of all mortgage loans made and HELOCs extended
15 in the country.

16 73. In its 2006 annual report, Countrywide trumpeted the fact that "[w]hile the overall
17 residential loan production market in the United States has tripled in size since 2000, from \$1.0
18 trillion to \$2.9 trillion at the end of 2006, Countrywide has grown nearly three times faster, going
19 from \$62 billion in loan originations in 2000 to \$463 billion in 2006."

20 74. In addition, Countrywide directly and indirectly motivated its branch managers,
21 loan officers and brokers to market the loans that would earn the highest premiums on the
22 secondary market without regard to borrower ability to repay. For example, the value on the
23 secondary market of the loans generated by a Countrywide branch was an important factor in
24 determining the branch's profitability and, in turn, branch manager compensation. Managers
25 were highly motivated to pressure their loan officers to sell loans that would earn Countrywide
26



1 the highest premium on the secondary market, which resulted in aggressive marketing of such
2 loan to consumers.

3 75. The secondary market affected Countrywide's pricing of products and, in order
4 sell more loans on the secondary market, Countrywide relaxed its underwriting standards and
5 liberally granted exceptions to those standards. Countrywide managers and executives,
6 including but not limited to defendants Mozilo and Sambol, had access to information that
7 provided transparency and a seamless connection between secondary market transactions, the
8 loan production process, and managerial and sales incentives.

9 **E. Countrywide Corrupts the Appraisal System**

10 **1. Countrywide's inflated appraisals**

11 76. According to Mark Zachary, a former Regional Vice President of Countrywide's
12 joint venture with KB Home, Countrywide Mortgage Ventures, LLC, the Company blatantly
13 ignored its underwriting policies and procedures. In September 2006, Mr. Zachary informed
14 Countrywide executives that there was a problem with appraisals performed on KB Home
15 properties being purchased with Countrywide's loans. KB Home is one of the largest
16 homebuilders in the nation. According to Mr. Zachary, Countrywide executives knew that
17 appraisers were strongly encouraged to inflate appraisal values by as much as 6% to allow
18 homeowners to "roll up" all closing costs. According to Mr. Zachary, this practice resulted in
19 borrowers being "duped" as to the values of their homes. This also made loans more risky
20 because when values were falsely increased, loan-to-value ratios calculated with these phony
21 numbers were necessarily incorrect.

22 77. Mr. Zachary also believed this practice misled investors who later purchased these
23 loans through securitizations because these investors were not made aware that the actual home
24 values were less than the inflated appraised values. According to Mr. Zachary, the inflated
25 appraised values put buyers "upside down" on their homes immediately after purchasing them;
26 that is, the borrowers immediately owed more than their homes were worth. Thus, the buyers



1 were set up to be more susceptible to defaulting on their loans. This practice also put
2 Countrywide at risk because it was unaware of the true value of the assets on which the
3 Company was loaning money.

4 78. Mr. Zachary brought his concerns to executives of the Countrywide/KB Home
5 joint venture, as well as Countrywide executives in Houston, the Company's Employee Relations
6 Department and the Company's Senior Risk Management Executives.

7 79. According to Mr. Zachary, the Company performed an audit investigating these
8 matters in January 2007, and the findings of the audit corroborated his story. According to
9 Mr. Zachary, the findings of this audit were brought to the attention of Countrywide executives.

10 80. On information and belief, the inflated appraisal practice was not limited to KB
11 Home but was a common feature of many loans. As such it was essential to defendants' scheme
12 that there be a pool of appraisers who would play ball – *i.e.*, inflate their appraisals.

13 **2. The blacklisting of honest appraisers**

14 81. Part of Countrywide's scheme to increase market share and to make as many
15 loans as possible involved the corruption of the appraisal process. Countrywide wanted
16 appraisals that supported the loans it wished to make.

17 82. To accomplish this objective, Countrywide has engaged in a pattern and practice
18 of pressuring appraisers to write an appraisal designed to have the loan underwritten even if the
19 appraisal violates USPAP. In other words, Countrywide is more interested in having the
20 property pass appraisal than it is in determining whether an appraisal is fair and accurate and
21 prepared in accordance with industry standards. If an appraiser does not "play ball" and produce
22 a report affirming the property value or parameters that Countrywide expects or wants, it places
23 the appraiser on its "Field Review List," or some list of exclusion ("Exclusion List"). These are
24 fraudulent acts on the part of Countrywide, which as set forth below, are also undertaken by
25 LandSafe.
26

1 83. The Field Review List or Exclusion List is a Countrywide database containing the
2 names of appraisers whose reports Countrywide will not accept unless the mortgage broker also
3 submits a report from a second appraiser. The practical effect of being placed on the Field
4 Review List is to be “blacklisted” – no mortgage broker will hire an appraiser appearing on the
5 Field Review List to review a property sale in which Countrywide will be the lender because the
6 broker simply will not pay to have two appraisals done. Instead, the broker will simply retain
7 another appraiser who is not on the Field Review List.

8 84. While an honest lender might have a legitimate purpose to maintain a list of
9 appraisers it was unwilling to use, for example appraisers who have been sanctioned by their
10 state licensing boards or otherwise determined after process to be unqualified, Countrywide and
11 LandSafe had no such legitimate purpose with respect to its Field Review List. Countrywide and
12 LandSafe falsely and fraudulently used their exclusionary lists to punish and retaliate against
13 appraisers who even attempted to maintain the designed integrity and independence of the
14 appraisal process.

15 85. Thousands of appraisers have been placed on the Field Review List. Countrywide
16 and LandSafe have used the Field Review List or Exclusionary List for more than four years.

17 86. When someone on the Countrywide “do not use” database comes up on an
18 appraisal submitted to Countrywide, the appraisal is automatically flagged for a “field review” or
19 “2055” form. A field review is an appraisal that reviews the original appraisal. As a matter of
20 course, if Countrywide flags an appraisal, all of these field reviews go to LandSafe. The “field
21 review” is a code or message for LandSafe to shoot holes in the original appraisal and appraise
22 the property lower or pursuant to Countrywide’s wishes. By this scheme, LandSafe works with
23 Countrywide to enforce its “do not use” list.

24 87. Plaintiff submitted an appraisal that was flagged for a “field review.” The review
25 found several purported issues with the appraisal and deemed it inadequate. But when the same
26 value was turned in on the same property by another appraiser in Plaintiff’s offices under a

1 different company name, the same value that had been attacked by LandSafe was accepted
2 without a field review. Plainly this evidences fraud on the part of Countrywide and LandSafe
3 and specific false statements in their communications to Plaintiff and review of his appraisals.
4 The appraisal was only “reviewed” and was only deemed inadequate when it was submitted by
5 Plaintiff. An additional false and fraudulent statement by LandSafe was its use of improper
6 appraisal practices in order to attack one of Plaintiff’s appraisals, including misstating distance of
7 alleged comparables from the subject property.

8 88. The chilling effect of the blacklist is significant. Because Countrywide is so
9 huge, all or a substantial portion of these loans may wind up being submitted to Countrywide.
10 Since the broker can’t rule out that Countrywide may be the ultimate lender, and since they know
11 from the blacklist that a field review will be required if they choose a blacklisted appraiser, they
12 won’t use Plaintiff or others on the blacklist for the appraisal because there exists the real
13 possibility of the requirement of a field review, coupled with doubling the appraisal cost to the
14 broker’s applicant and the working knowledge that LandSafe will knock down the appraised
15 valuation, thereby inhibiting approval of the loan.

16 89. LandSafe is a “captive” puppet of Countrywide, either by virtue of ownership or
17 economic power as its largest client, such that LandSafe knows what Countrywide wants to
18 accomplish with its blacklist and facilitates Countrywide’s scheme by attacking the appraisals of
19 persons on the list and challenging valuations, whether warranted or not. LandSafe’s separate
20 incorporation allows the Enterprise to falsely project independence between loan origination and
21 property valuation.

22 90. Plaintiff Capitol West has been subjected to the Countrywide scheme.
23 Countrywide representatives pressured Capitol West to increase valuations or vary from the
24 USPAP on appraisals that Capitol West provided for three separate loan transactions. These are
25 specific examples of fraudulent acts by Countrywide’s loan officers.
26

1 91. Capitol West refused to succumb to Countrywide's pressure to compromise its
 2 integrity and independence and refused to commit fraud and violate federal and state laws. Its
 3 reward? Countrywide fraudulently placed Capitol West on the Field Review List. Capitol West
 4 learned this from a Countrywide employee.

5 92. Capitol West does not stand alone. The following are examples of experiences of
 6 other appraisers, each of whom did business with Countrywide or LandSafe and were blacklisted
 7 by Countrywide and/or LandSafe:

8 (a) Confidential Witness 1 ("CW 1") reports as follows:

9 I created an appraisal for Countrywide and they made a loan of
 10 \$420k on 4/21/2005. Later, there was a second independent
 11 mortgage placed on the property for \$140k on 7/7/2005 by JP
 Morgan Chase.

12 Subsequently Countrywide, while packaging loans to sell, had a
 13 review performed at \$400k +/- on my appraisal of \$700k. The
 14 appraised home was in Canyon Lake where 90% are speculative
 and custom homes. ***I was placed on their Blacklist without
 notice.***

15 One of my clients notified me of this action and I immediately
 16 called and spoke with Dorothy Lim of Countrywide 4/6/2006. I
 17 was told I could appeal the decision, however, I thought my
 appraisal was "slightly excessive," again slightly, with the review
 value being at the bottom of the market.

18 I have never had any previous problems with any lender, state or
 19 other governing body in the industry. I chose to take my penance,
 wait for a year, further my education to Certified status, get FHA
 approved and try again. I have since accomplished this.

20 I called and spoke to Dorothy 10/15/2008 and was denied removal
 21 from the blacklist. Again I was told I could appeal just as if it was
 4/6/2006 all over again.

22 (b) Confidential Witness 2 ("CW 2") went from a Première
 23 appraiser after completing about 1,400 appraisals for
 LandSafe/Countrywide to the Review/Black List. There were
 24 about 4 appraisals that did not make value and were audited by
 LandSafe Quality Control Board saying they were excessive. I
 25 tried to communicate with the review appraiser with no success.
 However during the conversation with the review appraiser on one
 26 of the appraisals under review, he stated my appraisal was not
 much different than the field review and couldn't understand why



1 it was still under review. When the appraisal did not make the
2 value they would call many times and ask if there was anyway to
3 up the value as they were saying that they weren't applying any
pressure but could I please re-look at the comps and try to up the
value.

4 (c) Confidential Witness 3 ("CW 3") was taken off
5 Countrywide's appraiser list due to a review by an appraiser who
6 was biased in the property being reviewed. The property was a
7 NEW manufactured home which sold for \$83,000. The review
8 came in at \$46,000. The reviewer used sales which were
9 foreclosure sales and ages ranging from 2 to 7 years old, and
saying the sales were in similar condition to that of a NEW home.
A NEW car is not the same as an OLD car. The reason for the
review was due to the property being foreclosed. My Sale 1 is a
property in the same subdivision, an identical home as the subject,
sold for \$86,500 and financed by Countrywide.

10 It appears to be a situation of POOR underwriting or a situation
11 where the homeowner fell on bad times for some reason.

12 However, a review appraisal has put me on a blacklist. I have not
13 been able to receive work from Countrywide since 2002. I am a
14 current member of the Appraisal Institute and in the process of
working towards my SRA designation. I have been appraising
since 1983.

15 (d) Confidential Witness 4 ("CW 4") has been a Countrywide
16 "preferred" appraiser for many years and was doing a considerable
17 amount of work for LandSafe/Countrywide until 12-18 months
18 ago. Then the work pretty much stopped coming in. I am fully
19 aware that Countrywide/LandSafe is still ordering work from other
appraisers in this area who aren't on the "preferred" list, who have
many less years of experience than I, and are known for "hitting
the number the lender wants" without pointing out any negative
things.

20 So yes, after being an appraiser for 32+ years, I am disheartened by
21 Countrywide's dishonest business practices. Because of their size
22 and appraisal management company, Countrywide has
23 purposefully chosen to make loans using poor quality appraisals
24 completed by appraisers who give them what they want to hear.
25 And I believe they used their in-house polling system to identify
26 the specific appraisers that would – and would not – get work.

1 **3. LandSafe Also Blacklists or Excludes Honest Appraisers**

2 93. LandSafe also fraudulently created its own “blacklist” or “Exclusion List” that
3 applied to work on Countrywide loans. An appraiser from Florida, Confidential Witness 5
4 (“CW 5”), describes his experience with LandSafe as follows:

5 I was “black listed” from Countrywide because I was unwilling to
6 comply with their underwriting guidelines which would have
7 caused me to present appraisals with misleading and non-credible
8 results. I have been doing appraisals for Countrywide for Decades,
9 and was the VERY FIRST EDI approved Landsafe appraiser in
10 Florida in the early ‘90s.

11 According to local Countrywide Mortgage offices, I was deemed
12 “uncooperative” by Landsafe, and was blacklisted. The local
13 branches protested, to no avail.

14 This has devastated my business, as nearly all local mortgage
15 brokers broker to Countrywide. If they continue to use me, a
16 mandatory review appraisal is required at an additional cost to the
17 broker of \$350! (though Landsafe only pays the appraiser \$150!!).

18 I was informed of my removal, after a review of 7 appraisals I had
19 completed (out of about 50 in a several month period). Oddly
20 enough, each of the appraisals reviewed came in below sale price,
21 or below LandSafe’s “target” value (what they say is a USPAP
22 legal “qualifying value”!!!)

23 Lastly, I attempted to report this to a supposedly separate
24 “Appraiser Independence Hotline” at Landsafe, only to have the
25 same individual who reviewed the appraisals answer the phone!
26 How is that for appraiser independence!

94. Another example comes from Confidential Witness 6 (“CW 6”):

 I was asked to reconsider appraisals that had been completed. A
Landsafe representative would call and indicate that based on other
“sales” that the value should be changed. The “sales” turned out to
be properties in an AVM (Automated Valuation Model). These
were not actual closed sales but were properties which the AVM
applied to them. When I asked them to provide these “sales” they
would not.

F. The Impact of Countrywide's Unlawful Conduct on Capitol West

95. Any appraiser placed on Countrywide's Field Review List will lose substantial revenue. Indeed, many appraisers on Countrywide's Field Review List struggle to stay in business.

96. Mr. Massey was regularly pressured to change the values of his appraisals by brokers. Typically a broker would call Mr. Massey and ask if they provided him with additional information about the property if Mr. Massey would consider increasing the value he had assigned to the property. Because appraisers should take all information into consideration when arriving at a value Mr. Massey was willing to consider additional information if he had not yet completed his report, but he did not always deem the additional information sufficient to increase the value of a property. In numerous instances, despite pressure from brokers, Mr. Massey refused to change the values of his appraisals. Mr. Massey recalls four instances in which Countrywide wholesale representative Devin Fahrner asked him to change a value on an appraisal report. The last instance in which he refused to change a value happened just a few weeks prior to Mr. Massey being placed on the Unacceptable Vendor List ("UVL") in 2008. Since Mr. Massey refused to change the value, the loan could not be funded and the mortgage was never completed.

G. Wade Massey of Capitol West Appraisals was Denied Fair Procedure

97. Wade Massey of Capitol West Appraisals was informed, in a letter sent via U.S. Mail on March 11, 2008, that he had already been placed on the UVL. The letter was signed by Dorothy Lim, an employee of Countrywide in Westlake Village, California. The letter informed Mr. Massey that his appraisal reports were no longer acceptable because of concerns with his appraisal reports for two properties: one at Upper Fitchs Point Rd., Garden Valley, Idaho and the other at 8585 W. Rioja St., Star, Idaho. Mr. Massey was given 30 days to refute Countrywide's findings in writing. This letter from Countrywide did not identify any provision of USPAP, licensing laws, or any code that Mr. Massey had violated. CHL-0000000254-255.

1 **1. Upper Fitchs Point Rd. Appraisal**

2 98. One of the appraisal reports that Countrywide's notice letter identified as
3 unacceptable was located at 21 Upper Fitchs Point Rd. Mr. Massey valued this property at
4 \$358,000. Countrywide's letter briefly identified three inadequacies in Mr. Massey's report as
5 determined by LandSafe:

6 (1) Two appraisal reports were generated for this property and the first report
7 identified the transaction as a refinance and the second report identified the transaction as a
8 purchase. These reports both had the same effective date but different report dates.

9 (2) The appraisal report indicated that the subject property was listed in the
10 Multiple Listing Service (MLS) with an asking price of \$329,000. Countrywide found that Mr.
11 Massey's opinion value of \$358,000 was illogical.

12 (3) Countrywide concluded that the comparable properties relied upon by Mr.
13 Massey were "excessively distant" and the gross living area (GLA) of the comparables was
14 significantly larger than the subject property. CHL-0000000254.

15 These were false and fraudulent statements by Countrywide and LandSafe in furtherance
16 of the scheme. In rebuttal, Mr. Massey offered supported and justifiable responses to each
17 concern raised by Countrywide. Mr. Massey explained as follows:

18 (1) Two appraisal reports were generated because the appraisal was initially
19 mistakenly ordered as a refinance transaction, but it should have been designated a purchase
20 transaction. No factor affecting the appraisal had changed, so the effective date of the report
21 remained the same. Mr. Massey was on vacation in the interim between the initial report for the
22 refinance transaction and the secondary report describing the transaction as a purchase. This
23 resulted in different report dates. As required by USPAP, Mr. Massey properly disclosed the
24 change made to the report. *See* CHL-0000000075.

25 (2) Mr. Massey clarified that the original listing price of the subject property
26 was \$378,000, but the property owner began reducing the price of the property in hopes of

1 quickly selling the property to raise money in response to family financial difficulties resulting
 2 from family medical problems. Thus, the MLS listing of \$329,000 was likely *below* the market
 3 value. Mr. Massey concluded that \$358,000 was the fair and market-supported value of the
 4 property.

5 (3) The subject property is located in Garden Valley, Idaho, a rural Idaho
 6 town¹ with distant properties. As required by USPAP, Mr. Massey properly disclosed that he
 7 relied upon comparables outside a one-mile radius and a six-month time frame. Mr. Massey also
 8 described his reasoning in relying on these comparables. He noted the fact that the properties
 9 were incorrectly described in the MLS listings, and explained why he believed his opinion of
 10 value was supported. CHL-0000000251-252.

11 99. On March 14, 2008, Countrywide's Dorothy Lim sent Mr. Massey's explanations
 12 via electronic mail to LandSafe's UVL Review and particularly asked Jo Hallum of LandSafe to
 13 review Mr. Massey's rebuttal. CHL-0000000250. Ms. Hallum's review of Mr. Massey's rebuttal
 14 was a sham. It was merely a cut-and-paste from LandSafe's initial review of the Upper Fitchs
 15 Point appraisal. *Compare* CHL-00000000010 and CHL-0000000244. Ms. Hallum's subsequent
 16 evaluation identified no violations of USPAP, or any other legal provision, and neither did she
 17 substantively respond to Mr. Massey's rebuttal in her purported review. Instead, Ms. Hallum
 18 simply and fraudulently recommended that Mr. Massey's appraisals be deemed "unacceptable."
 19 Ms. Lim emailed Mr. Massey's rebuttal to Ms. Hallum at 2:12 p.m. on Friday, March 14, 2008.
 20 Ms. Hallum responded on Monday, March 17, 2008 at 3:18 p.m. This is insufficient time to
 21 adequately respond to Mr. Massey's rebuttal. On information and belief, Ms. Hallum is not an
 22 appraiser licensed in the state of Idaho.

23
 24
 25 ¹ Recent data on Garden City, Idaho lists the town's population as 2,213 people with a very
 26 low population density of 2.3 people per square mile. *See* <http://www.city-data.com/city/Garden-Valley-Idaho.html>

1 **2. Rioja Street Appraisal**

2 100. The second appraisal report on which Countrywide relied as support for
3 blacklisting Mr. Massey was an appraisal of property at 8585 W. Rioja St. in Star, Idaho. Mr.
4 Massey appraised the property for \$730,000. Again, LandSafe conducted an entire review of
5 this appraisal (*see* CHL-0000000190-234), but Countrywide's notice letter to Mr. Massey only
6 raised three concerns with the appraisal:

7 (1) The appraisal reported the incorrect owner for the subject property.
8 Although this was a purchase transaction, the report listed the same name for the owner and the
9 borrower.

10 (2) The appraisal failed to consider and analyze the subject's marketing
11 history. Countrywide concluded that it was illogical for the subject property to be worth more
12 than the MLS listing price.

13 (3) Countrywide concluded that the comparable properties relied upon by Mr.
14 Massey were "excessively distant" and the gross living area (GLA) of the comparables was
15 significantly larger than the subject property. CHL-0000000254-255.

16 These were false and fraudulent statements by Countrywide made in furtherance of the
17 scheme.

18 101. In rebuttal, Mr. Massey offered the following explanations to address
19 Countrywide's concerns:

20 (1) Mr. Massey explained that the mistake for the owner of public record of
21 the property should have been identified by the underwriters and could easily have been
22 corrected by addendum, but Mr. Massey was not made aware of the mistake until after the report
23 was submitted and was given no opportunity to correct the error.

24 (2) Mr. Massey acknowledged that the previous listings for the Rioja property
25 were nonsensical. He explained that he also used private listings not available on MLS to assess
26

1 the property's value and described his reasoning for reaching a value that, in Mr. Massey's
2 professional opinion, was supportable.

3 (3) As an appraiser, USPAP imposes limits on the comparables available to an
4 appraiser. Mr. Massey explained that the comparables he used were the best available to him at
5 the time of the appraisal and he weighted his comparisons accordingly. CHL-0000000251-253.

6 102. Again, Ms. Lim of Countrywide provided this rebuttal via email to Ms. Hallum at
7 LandSafe, but there is no record of any review or response to Mr. Massey's rebuttal conducted
8 by anyone at Countrywide or LandSafe. Again, nowhere in Countrywide's communication with
9 Mr. Massey are any violations of USPAP or any law noted, nor is any meaningful review or
10 response given to Mr. Massey's rebuttal.

11 103. On March 18, 2008, Mr. Massey was informed by Dorothy Lim that his
12 explanation was not "credible" and that he did not satisfactorily refute Countrywide's findings.
13 CHL-0000000243. Mr. Massey was then placed on the Unacceptable Vendor List and has no
14 longer been permitted to complete appraisals for Bank of America or Countrywide.

15 104. Countrywide and LandSafe's review process of appraisers was a façade used to
16 justify the blacklisting of honest appraisers. Mr. Massey was not placed on the UVL for any
17 wrongdoing, nor was he given a meaningful review when he offered rebuttal evidence explaining
18 the concerns raised in his reports. The reasons provided for Countrywide's concerns with Mr.
19 Massey's work were pretextual; in fact, Mr. Massey was placed on the list because, a few weeks
20 prior to receiving notice he was on the Unacceptable Vendor List, Mr. Massey had refused to
21 "push value" on a loan.

22 105. As evidenced in documents produced by Defendants, the decision to place Mr.
23 Massey on the blacklist was made jointly by Countrywide and LandSafe out of their California
24
25
26

1 offices. Countrywide Account Executives² in Idaho, such as Devin Fahrner received a call from
 2 a LandSafe employee informing him that Massey was on the “blacklist.” The list is maintained
 3 on the Countrywide website.

4 106. Mr. Fahrner described Massey as “honest,” “hard working” and “knowledgeable.”
 5 Deposition of Devin Fahrner, Sept. 11, 2009 (“Fahrner Dep.”), at 70. Mr. Fahrner believes that
 6 Massey was put on the blacklist as a result of work Massey did on an appraisal involving a
 7 property on Upper Fitchs Road. Fahrner believed Massey “did nothing wrong.” Fahrner Dep. at
 8 82:23. The changes Massey made to the appraisal were fully disclosed in Mr. Massey’s
 9 appraisal report and did not change the substance of the appraisal: “we basically changed the
 10 components of the loan, but, in effect, the exposure to the client and Countrywide was still the
 11 exact same” *Id.* at 83:24-84:2. The borrower did not change, the value of the property did
 12 not change, and from Countrywide’s perspective the loan was the same before and after the
 13 changes made by Massey. *Id.* at 84-85.

14 107. A Countrywide employee told Fahrner that when they came across an appraisal
 15 that raised any questions as to accuracy, they “didn’t have time ... to determine if guilt was
 16 really there,” they just excluded the appraiser. *Id.* at 121.

17 108. The impact of being on the list was explained by broker Devin Fahrner:

18 Q. And in your experience, if somebody was on the
 19 Countrywide UVL, did that mean that a broker simply wouldn’t
 use them for fear of the loan ending up at Countrywide?

20 Objection to form.

21 THE WITNESS: That’s correct, either via direct
 22 origination or a third party, such as where I went after
 23 Countrywide. Because oftentimes the broker would be unaware
 that it might end up there and unaware of what might come during
 the process.

24
 25 ² An Account Executive is the principal link between Countrywide and the members of its
 26 brokerage network. The primary responsibility of an Account Executive is to assist brokers in
 delivering loans to Countrywide.

1 Fahrner Dep. p. 63:4-14.

2 109. The effect of Wade Massey's blacklisting continues to this day. For example, a
3 loan officer at Metro Capital Mortgage of Boise, Idaho, informed Mr. Massey in October 2009
4 that "she found out that Wade is on Bank of America's blacklist and we sell a lot of loans to
5 them and that's why we had to remove him." Likewise, in October 2009, Mr. Massey was
6 informed by Keith at SecoLink, an affiliate of Key Bank, that he was "on the Bank of America
7 ineligible list ... and [because] Key Bank sells their loans to Bank of America [SecoLink] can't
8 send work to any appraiser that is on that list"

9 110. Mr. Massey has been informed by other mortgage brokers that if the broker uses
10 Mr. Massey as the appraiser, Countrywide will not do business with that broker. Such brokers
11 included Mortgage Integrity, Clearwater Mortgage, Pathfinders Mortgage and America Home
12 Key.

13 111. Since appearing on the Field Review List, Plaintiff Capitol West's business has
14 declined and revenues have plummeted. Indeed, Capitol West is now losing \$8,000 in revenue
15 per month as a direct and proximate result of being placed on the Field Review List. An
16 employee of Countrywide has advised Capitol West that it will remain on the Field Review List
17 for at least a full year. The practical result of the blacklist is that mortgage brokers simply will
18 not use Capitol West on many transactions because the broker does not know if Countrywide
19 will be the lender at the outset.

20 112. The Mortgage Brokers who did business with Defendants were willing
21 participants in the enterprise as evidenced by the following example from Confidential Witness 7
22 ("CW 7"):

23 I never spoke with anyone from Countrywide, all pressure came
24 from Mortgage Brokers. This started early 2005.... Several times
25 I was told to disregard a certain negative aspect of the subject
26 (location, condition) and retake photos either from a different angle
or to remove certain pictures and wording from a report. As noted
above, all communications were through different Mortgage
Brokers.... I had heard of this, and thought it meant that any work



1 that was turned in by myself or anyone else in my company would
 2 have to undergo a field review. Which in turn would mean the
 3 broker I was working with would then have to pay for this review.
 4 There were several times that I offered to pay for the review in
 5 hopes that Countrywide would see the quality of my work and take
 6 me off this list.

7 113. The impact goes beyond damage to Plaintiff and the proposed Class. Indeed,
 8 Countrywide's actions denigrate the integrity of the appraisal process on a wide scale, as inflated
 9 appraisals become "comparables" used in other appraisals, leading to layers of overvaluations
 10 and distorting prices in the marketplace.

11 **H. Another Example of the Blacklist Scheme**

12 114. The operation of the scheme is described in a recent action entitled *Brubaker &*
 13 *Associates, Inc. v. LandSafe Appraisal Services, Inc. and Countrywide Home Loans, Inc.*,
 14 No. 2009-57318, District Court of Harris County, Texas. The complaint's allegations are
 15 summarized below.

16 115. Brubaker & Assoc. is an appraisal company with its main office in Houston,
 17 Texas, and the company has been in business since 1988. The company performs approximately
 18 six to ten thousand (6,000 – 10,000) appraisals a year and employs approximately eighteen (18)
 19 appraisers. Brubaker & Assoc. is one of the largest independently owned appraisal companies in
 20 Texas. Michael Brubaker, the company's founder and principal, has been an active Texas
 21 appraiser since 1982, and he earned his SRA designation from The Appraisal Institute (then
 22 called the Society of Real Estate Appraisers) in 1988.

23 116. On August 10, 2006, LandSafe solicited Brubaker to join the newly-formed
 24 Countrywide Premier Program. LandSafe promised Brubaker more appraisal orders if he and the
 25 company would agree to lower fees. On August 18, 2006, in return for the promise of the
 26 benefits associated with participation, specifically a greater volume of business, Brubaker
 reluctantly agreed to reduce fees and joined the Countrywide [LandSafe] Premier Program.
 Rather than provide the promised business volume, Countrywide and LandSafe instead

1 blacklisted Brubaker and substantially reduced Brubaker's business volume from LandSafe and
2 from other unrelated sources as well.

3 117. Brubaker's problems with LandSafe began after May 14, 2007, when Michael
4 Brubaker personally appraised 33203 West Haddon Court, Fulshear, Texas, for Excel Mortgage
5 Group, and its borrower Patricia Hamilton, at a fair market value of \$3.5 million. On July 17,
6 2007, at LandSafe's direction, Celso Torres performed a "field" review for LandSafe that
7 included his inspection of the property and supported Brubaker's West Haddon Court value.

8 118. Subsequently, LandSafe's in-house appraiser, Sarah McClure, performed a "desk"
9 review of the West Haddon Court property from her office in Plano, Texas, without the benefit
10 of a personal inspection. She valued the property at only \$1.5 million, approximately \$2 million
11 less than the value assigned by both of the appraisers who actually saw the property.

12 Countrywide and LandSafe invited Brubaker to defend his appraised value and, on August 1,
13 2007, Brubaker provided a comprehensive written explanation of his appraised value, in which
14 he identified additional supporting comparables and disputed and refuted McClure's \$1.5 million
15 value.

16 119. LandSafe did not respond to Brubaker's August 1, 2007 analysis, or to his
17 additional comparables, until November 6, 2007, when LandSafe's Appraisal Audit Resolution
18 Committee took issue with the Haddon Court appraisal and two other appraisals performed by
19 Brubaker – 1115 China Grove, Rosharon, Texas, and 11 Lakewood Lane, Seabrook, Texas.
20 Each of the three properties LandSafe chose to dispute is unique, and thus required numerous
21 adjustments from the best available comparables. LandSafe went out of its way to select
22 properties for which honest appraisers can have legitimate differences of opinion, but in each
23 case LandSafe's audit letter nevertheless complained about those aspects of the reports directly
24 attributable to the unique nature of the properties. Again, in writing, Brubaker responded in
25 explicit detail to LandSafe's complaints about the three appraisals, but Brubaker never received
26 any rebuttal or the written results promised in LandSafe's November 6, 2007 audit inquiry.

1 120. Compass Bank, a lender which had done business with Brubaker for over a
2 decade, subsequently called Brubaker to say it could not use Brubaker because Countrywide and
3 LandSafe would not accept Brubaker's appraisals. Until Countrywide and LandSafe compelled
4 Compass Bank to seek appraisals elsewhere, Compass Bank was one of the largest clients of
5 Brubaker & Assoc., and Compass Bank would still be a client of Brubaker & Assoc. Brubaker
6 alleges that it has lost other customers as a result of Defendants' wrongful acts and omissions.

7 121. LandSafe set up a sham appeal process which Brubaker worked through in an
8 attempt to persuade LandSafe to reconsider its decision to blacklist both Michael Brubaker
9 individually and Brubaker & Assoc. In addition to blacklisting Michael Brubaker, who had
10 personally prepared and signed the three appraisals questioned by LandSafe, Brubaker & Assoc.
11 was also blacklisted by LandSafe pursuant to a reported policy that appraisals performed by any
12 of the numerous other appraisers at Brubaker & Assoc. were not acceptable to LandSafe.

13 122. A sudden firm-wide ban of all appraisers who worked for Brubaker & Assoc. was
14 part of LandSafe's plan to destroy Brubaker's business, and make an example of an honest and
15 independent appraiser with a significant presence in the Houston market. While Bank of
16 America and LandSafe had no qualms about destroying the reputations of appraisers who had
17 done nothing even allegedly improper other than work for Brubaker & Assoc., thus creating the
18 impression that these individuals were inadequate or had done something worthy of being placed
19 on a blacklist, at the same time Bank of America and LandSafe actively solicited Brubaker's
20 appraisers to work for them, and actually hired some of them. Bank of America and LandSafe
21 knew that their alleged concerns about these appraisers were a sham.

22 123. Brubaker's customers have reported that LandSafe will not accept appraisals from
23 Brubaker & Assoc. regardless of who prepares them. LandSafe has indicated to Brubaker over
24 the telephone (and on information and belief to third parties) that Brubaker's status with
25 LandSafe is "Tier 4," which is the lowest rating that LandSafe has for appraisers. Merely
26 working for Brubaker was enough to get more than a dozen other innocent appraisers blacklisted



1 too, without any trappings of the superficial and phony “process” that was employed to condemn
2 Michael Brubaker.

3 **I. Stock Sales of Mozilo and Sambol**

4 124. Both Mozilo and Sambol realized profits on sales of Countrywide stock in 2005,
5 2006, and 2007, through stock sales pursuant to various 10b5-1 plans. From May 9, 2005, when
6 the Form 10-Q for the first quarter of 2005 was filed, through the end of 2007, Mozilo exercised
7 stock options and sold the underlying shares for total proceeds of at least \$260 million, and
8 Sambol exercised stock options and sold the underlying shares for total proceeds of at least \$40
9 million.

10 **J. Governmental Actions Relating to Countrywide’s Practices**

11 125. Within the past year, Countrywide and its officers have come under tremendous
12 scrutiny for the practices alleged in this Complaint.

13 126. On or about October 18, 2007, the U.S. Securities & Exchange Commission
14 began informally investigating the insider stock sales of Countrywide’s Chief Executive Officer,
15 Angelo Mozilo. Mr. Mozilo – who was paid \$142 million last year and was the seventh highest
16 paid CEO in the United States – has sold nearly \$300 million in Countrywide shares since 2005
17 pursuant to the Company’s prearranged selling program. Further, after October 2006, when
18 Mr. Mozilo put a new selling program in place at Countrywide, he raised the number of shares
19 executives could sell, from 350,000 shares in October 2006, to 580,000 shares in February 2007,
20 when shares were at a high of \$45.03 per share. These stock programs provided an incentive for
21 the Defendants, and the top officials of Countrywide, to develop and implement the scheme
22 alleged in this Complaint.

23 127. On June 4, 2009, the SEC formally charged Mozilo and Sambol with securities
24 fraud.
25
26

1 128. On October 6, 2008, in response to criticism from regulators and advocacy
2 groups, Countrywide announced a multi-state settlement of the AG Actions, pursuant to which it
3 would offer certain prospective relief, including a limited loan modification program.

4 129. As is noted above, the Derivative Action that was brought against Countrywide,
5 in which it was alleged that Countrywide essentially abandoned its underwriting standards,
6 recently survived a motion to dismiss, in an opinion in which Judge Mariana R. Pfaelzer found a
7 “strong inference of a Company-wide culture that, at every level, emphasized increasing loan
8 origination volume in derogation of underwriting standards.” Derivative Action Order, 554 F.
9 Supp. 2d at 1058. The Court noted that numerous confidential witnesses, mostly former
10 employees of Countrywide, who had been quoted in the complaint presented a “striking[]” story
11 of “rampant disregard for underwriting standards” at Countrywide in the interest of pushing
12 through as many loans as possible. *Id.* at 1059. This scheme of pushing quantity over quality,
13 including a lack of any analysis of reasonable criteria to ascertain the appropriateness of the
14 loans Countrywide issued to its borrowers, was uniformly concealed from borrowers, just as it
15 was concealed from the public. *Id.* at 1057 (holding that plaintiffs had presented a “cogent and
16 compelling inference” that the defendant Countrywide executives had misled the public about
17 the “rigor of Countrywide’s loan origination process, the quality of its loans, and the Company’s
18 financial situation – even as they realized that *Countrywide had virtually abandoned its own loan*
19 *underwriting practices*”) (emphasis added).

20 V. CLASS ACTION ALLEGATIONS

21 130. Plaintiff brings all claims herein as class claims pursuant to Rule 23 of the Federal
22 Rules of Civil Procedure. The requirements of subparts 23(a) and 23(b)(2), and (b)(3) are met
23 with respect to the Class defined below.

24 A. Class Definition

25 131. Plaintiff brings this action on behalf of itself and on behalf of all certified
26 appraisers nationwide who have been blacklisted or otherwise outed as an approved appraiser by

Countrywide, Bank of America and/or LandSafe without prior notice and/or with a notice that did not comply with federal or state law. Excluded from the proposed Class are any individual or corporation employed or controlled by Countrywide and/or Landsafe, and any person or entity related to it, and all governmental entities and any appraiser who has been delisted by any regulatory authority or who is not a certified or licensed appraiser.

B. Numerosity

132. The Class is so numerous that joinder of all members is impracticable. Class members number in the thousands. The precise number of Class members and their addresses are unknown to the Plaintiff, but can be obtained from Defendants' records.

C. Commonality

133. There are questions of law or fact common to the Class, including at least the following:

- (a) Whether Defendants created and maintained a Field Review List or "Watch List" or "do not use" database;
- (b) Whether Defendants pressured appraisers into producing appraisal reports that misstated the value of the subject properties or were not in conformance with USPAP;
- (c) Whether Defendants used the wires and mails to further the scheme;
- (c) Whether Defendants violated RICO;
- (d) Whether Defendants' wrongful conduct resulted in economic damage to Plaintiff and members of the Class, and the amount of said damages; and
- (e) What relief should be imposed in favor of the Plaintiff and the Class.

D. Typicality

134. Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff has the same interests in this matter as all other members of the Class, and its claims are substantially identical to and typical of the claims of all members of the Class. Plaintiff does not have interests antagonistic to or in conflict with those of the members of the Class.

E. Adequacy

135. Plaintiff is committed to pursuing this action and has retained competent counsel experienced in class actions. Plaintiff will fairly and adequately represent the interests of the Class members.

F. The Prerequisites to Maintaining a Class Action for Injunctive Relief are Readily Apparent

136. The prerequisites to maintaining a class action for injunctive relief exist:

a. If injunctive relief is not granted, great harm and irreparable injury to Plaintiff and the members of the Class will continue; and

b. Plaintiff and the members of the Class have no adequate remedy at law for the injuries which are threatened to recur, in that, absent action from this Court, Defendants will continue to violate RICO and cause damage.

137. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendants – for example, one court might decide that the challenged actions are illegal and enjoin them, while another court might decide that those same actions are not illegal. Individual actions may, as a practical matter, be dispositive of the interests of the Class.

138. Defendants' actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

G. Common Questions Predominate, and the Class Action Device Is Superior

139. The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. To Plaintiff's knowledge, no similar litigation is currently

pending by other members of the Class. Plaintiff's counsel, highly experienced in class actions, foresee little difficulty in the management of this case as a class action.

VI. FRAUDULENT CONCEALMENT; TOLLING; ESTOPPEL

140. Any applicable statutes of limitations have been tolled by Defendants' illegal practices. Defendants have fraudulently concealed from Plaintiff and the Class the truth about the unlawful practices described herein, thereby tolling the running of applicable statutes of limitation.

141. Plaintiff and the Class could not have reasonably discovered Defendants' practices as alleged herein earlier than they did.

142. Defendants are estopped from relying on any statute of limitations defense.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF 18 U.S.C. § 1962(C)(D)

143. Plaintiff, on behalf of itself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

144. This cause of action, which alleges violations of Section 1962(c) of RICO, 18 U.S.C. § 1962(c), is asserted against the Defendants on behalf of the Class.

145. Plaintiff, each Class member, and each Defendant is a "person," as that term is defined in 18 U.S.C. § 1961(3).

146. At all relevant times, in violation of 18 U.S.C. § 1962(c), the Defendants conducted the affairs of certain association-in-fact enterprises identified herein, the affairs of which affected interstate commerce through a pattern of racketeering activity, and engaged in a conspiracy in violation of 1962(d).



A. The Enterprises

1. The Countrywide Brokerage Enterprise

147. The RICO “enterprise” is an association-in-fact entitled the “Countrywide Broker Enterprise” consisting of: (1) Countrywide, including its separately incorporated LandSafe loan closing services subsidiaries, (2) Mortgage Integrity, Home Mortgage Resources, Hunter Creek Mortgage, Clearwater Mortgage, New Line Mortgage, Path Finders Mortgage and American Home Key, and (3) other mortgage brokers who have contracts with Countrywide pursuant to which they sell, arrange, promote, or otherwise assist Countrywide in directing borrowers into loans issued by Countrywide.

148. The exclusionary list is published via website that is available only to qualified mortgage brokers who do business with Countrywide. On information and belief, the mortgage brokers who are part of this enterprise have access to this list and their identities are known to Countrywide in that Countrywide provides a password to obtain access to the list. The Enterprise is ongoing and continuing business organizations consisting of both corporations and individuals that are and have been associated for the common or shared purposes of excluding selected appraisers from obtaining any business related to real estate transactions in which Countrywide or Bank of America is the mortgage lender. The Enterprise operated as a part of Countrywide’s ever larger scheme to grow itself to the largest real estate lender in the United States and the scheme of its top officers to artificially inflate its stock price.

149. Countrywide, during the relevant time period, was the largest residential mortgage lender in the United States. It had enormous economic clout with independent mortgage brokers. Thus, Countrywide and mortgage brokers operated as a continuing unit whose major purpose and common purpose was to place as many loans with Countrywide as possible. Because the maximization of Countrywide loan originations required appraisers who would “play ball,” the Countrywide Broker Enterprise had the common purpose to exclude non-compliant appraisers.



1 150. The Countrywide Broker Enterprise is an ongoing organization that engages in,
2 and whose activities affect, interstate commerce.

3 151. While all Defendants participate in and are members and part of the Countrywide
4 Broker Enterprise, they also have an existence separate and distinct from the enterprise.

5 152. In order to successfully steer as many borrowers as possible into inappropriate
6 subprime loans and/or to write as much business as possible, Defendants need a system that
7 allows them to effectively promote these loans which included “pushing” appraisers to meet
8 contract values. The Countrywide Broker Enterprise provides Defendants with that system and
9 ability, and their control of and participation in it is necessary for the successful operation of
10 their scheme. Furthermore, the participation by the LandSafe subsidiaries in the Countrywide
11 Broker Enterprise allows the enterprise to function more effectively, given that many of the
12 functions provided by these entities, such as appraisals, would normally be conducted by
13 independent entities. LandSafe’s participation in the enterprise allows the normal checks and
14 balances within the mortgage process to be eliminated, permitting Defendants to advance their
15 scheme and conceal the fraudulent activity they have been engaging in. It was important to
16 LandSafe and Countrywide that LandSafe appear to be a distinct company, *i.e.*, be separately
17 incorporated, because this allowed Countrywide and LandSafe to claim that LandSafe’s appraisal
18 functions were independent of Countrywide’s loan origination functions, as required by federal
19 and state regulations. As alleged herein, such claims were false.

20 153. The Defendants control and operate the Countrywide Broker Enterprise as
21 follows: (a) Countrywide determines the commission structure to be paid to all Countrywide
22 brokers and authorized mortgage brokers, rewarding and incentivizing them (with increased
23 commissions, and rewards such as all-expense-paid trips to Las Vegas) to offer borrowers loans
24 with less favorable terms than they would otherwise qualify for; (b) Defendants provide
25 Countrywide brokers and authorized brokers access to its CLUESTTM system, which has been
26 utilized to steer borrowers to more costly loans; (c) Defendants encourage Countrywide brokers

1 and authorized brokers to utilize Countrywide's LandSafe subsidiaries for certain closing costs
 2 associated with the loan; (d) Countrywide and LandSafe direct brokers to conduct a Field
 3 Review on noncompliant appraisers or to exclude certain appraisers; and (e) Countrywide and
 4 LandSafe create and send the exclusionary list to brokers. The Countrywide Broker Enterprise
 5 has a common purpose in that the brokers each wish to place business with Countrywide and/or
 6 Bank of America and these banks want the business that the brokers generate. One aspect of this
 7 common purpose is that it benefits the Enterprise to exclude any appraisers that do not "play
 8 ball."

9 154. The Countrywide Broker Enterprise has an ascertainable structure separate and
 10 apart from the pattern of racketeering activity in which the Defendants engage. The structure is
 11 as follows. Countrywide establishes and maintains a list of excluded appraisers and transmits
 12 that list to mortgage brokers throughout the country. Mortgage brokers understand that if they
 13 wish to place a loan with Countrywide, they must not use an excluded appraiser.

14 **2. Alternative Enterprise Allegations: The Countrywide Enterprise**

15 155. Plaintiff, the Class members and Defendants are all "persons" within the meaning
 16 of 18 U.S.C. § 1961(3).

17 156. Based upon Plaintiff's current knowledge, the following persons constitute a
 18 group of individuals associated in fact that will be referred to herein as the "Countrywide
 19 Enterprise": (1) Countrywide and (2) Countrywide's subsidiaries, including its LandSafe loan
 20 closing services subsidiaries. Countrywide has separately incorporated and purports to operate
 21 LandSafe distinctly from itself in order to appear to comply with state and federal regulations
 22 requiring independence between the loan origination process and the appraisal process.

23 157. The Countrywide Enterprise is an ongoing organization that engages in, and
 24 whose activities affect, interstate commerce.

25 158. While all Defendants participate in and are members and part of the Countrywide
 26 Enterprise, they also have an existence separate and distinct from the enterprise.

1 159. In order to successfully steer as many borrowers as possible into inappropriate
2 subprime loans, Defendants need a system that allows them to effectively promote these loans.
3 The Countrywide Enterprise provides Defendants with that system and ability, and their control
4 of and participation in it is necessary for the successful operation of their scheme. Furthermore,
5 the participation by the LandSafe subsidiaries in the Countrywide Enterprise allows the
6 enterprise to function more effectively, given that many of the functions provided by these
7 entities, such as appraisals, would normally be conducted by independent entities. LandSafe's
8 participation in the enterprise allows the normal checks and balances within the mortgage
9 process to be eliminated, permitting Defendants to advance their scheme and conceal the
10 fraudulent activity they have been engaging in.

11 160. The Countrywide Enterprise has an ascertainable structure separate and apart
12 from the pattern of racketeering activity in which the Defendants engage.

13 161. The Enterprises have a systemic linkage because there are contractual
14 relationships, financial ties, and continuing coordination of activities between Countrywide,
15 LandSafe and the brokers. There is a common communication network by which Countrywide
16 and the brokers shared and continued to share information on a regular basis throughout the class
17 period. Typically this communication occurred by use of the wires and mails in which
18 Countrywide, LandSafe and the brokers exchanged information about properties and appraisers.
19 Countrywide, LandSafe and the brokers functioned as a continuing unit for the purposes of
20 implementing the Field Review List.

21 162. At all relevant times, LandSafe and the brokers were aware of Countrywide's
22 conduct; were knowing and willing participants in that conduct by refusing to hire Plaintiff and
23 the Class members to conduct appraisals for loans being provided by Countrywide; and reaped
24 profits from that conduct.

1 163. The impacts of this conduct are still in place, *i.e.*, Plaintiff and the Class members
2 are still on the Field Review List and, consequently, brokers placing loans with Countrywide
3 refuse to hire Plaintiff and the Class members to prepare appraisals.

4 164. The foregoing evidences that all Defendants are willing participants in the
5 Enterprises; had a common purpose and interest in the establishment and operations of the
6 foregoing scheme; and agreed to a structure wherein LandSafe, the brokers and Countrywide
7 would bypass Plaintiff and the Class members in favor of other appraisers not on the Field
8 Review List. This structure was the basis on which the Enterprises operated.

9 **B. The Defendants' Use of the U.S. Mails and Interstate Wire Facilities**

10 165. The Enterprises engaged in and affected interstate commerce because they
11 engaged in the following activities across state boundaries: placing appraisers on the
12 Unacceptable Vendor List for pretextual reasons and without due process; and the exclusion of
13 appraisers appearing on the Field Review List from conducting appraisals.

14 166. During the Class Period, the Defendants' illegal conduct and wrongful practices
15 were carried out by an array of employees, working across state boundaries, who necessarily
16 relied upon frequent transfers of documents, information, products and funds by the U.S. mails
17 and interstate wire facilities. For example, Devin Fahrner, a Countrywide Wholesale Account
18 Executive in Boise, Idaho, was told by a Countrywide employee in California that Plaintiff
19 Capitol West had been placed on the Field Review List. This communication was made by
20 interstate wires and was part of implementation of the Scheme in that it was a wire sent to
21 exclude Massey because he refused to "push values" in violation of USPAP.

22 167. Defendants used the wires and mails to violate USPAP in other fashions as well.
23 According to a confidential witness, as part of the Scheme, staff appraisers were told and ordered
24 to call management if the appraised value came in at or above the value on the appraisal request
25 form.
26

1 168. According to this confidential witness, LandSafe used a computer program called
 2 Sidex. Sidex would generate a “value” and appraisers were told that an appraisal that did not
 3 meet the Sidex value, would “kill the deal.” If an appraisal came in below the Sidex value,
 4 management would call the appraiser and they would be “raked over the fire with questions and
 5 pressure.” No questions were raised if the appraisal came in over value. According to this
 6 witness, the Sidex tool was not accurate as a tool to set values.

7 169. As part of the Scheme, appraisers were told via transmissions over the Interstate
 8 wires to attend meetings with lenders to discuss how to “push values” as indicated in this email
 9 transmission between a LandSafe Field Valuation Manager, Stuart Hayashi and Bailey Greene, a
 10 loan officer at the Glendale, California Branch:

11 Stuart, if you and your folks can accommodate us, the 8/11 9 am
 12 meeting, that would be ideal. If that date doesn’t work, we would
 13 also be interested in 8/18 9 am. Let me know. There are some
 things we would ideally like covered in this meeting (if you don’t
 mind). Those items would be:

14 1) Intro to you and your staff (background, history, difference
 15 between staff and premier panel appraisers)

16 2) Market observations, trends, issues, challenges, etc., any type of
 relevant insight as we see low appraisals on almost every deal now

17 3) *How and when we should push values* – how everyone should
 18 use the Sidex product before committing to taking a larger deal,
 etc....

19 Let me know if you can help us out with the topics and the date(s).

20 Thanks

21 Bailey Greene
 22 Mgr, HLC Sales
 CMD 12 – Glendale, CA (emphasis added)

23 170. The term “push values” meant that the appraisers were to come up with a value
 24 that met the contract price and did not reflect a price derived from an appraisal that conformed to
 25 USPAP.
 26

1 171. This scheme used the mails and wires on at least the following occasions:
2 3/18/2008: email Dorothy Lim of Countrywide to Capitol West; 3/17/2008: Dorothy Lim email
3 to LandSafe's Jo Hallum; 1/9/2008: email Hallum to Lim and Cheryl Rowland at LandSafe;
4 3/17/2008: email Lim to "USA UVL Review"; 3/11/2008: Letter to Massey using U.S. mails.
5 Each of these mails were sent to effectuate the scheme of excluding Mr. Massey under fraudulent
6 pretenses.

7 172. The nature and pervasiveness of the scheme, which was orchestrated out of
8 Countrywide's offices, necessarily required those offices to communicate directly and frequently
9 with brokers by the U.S. mails and by interstate wire facilities.

10 173. Many of the precise dates of Defendants' uses of the U.S. mails and interstate
11 wire facilities (and corresponding RICO predicate acts of mail and wire fraud) have been hidden
12 and cannot be alleged without access to these Defendants' books and records. However, Plaintiff
13 can generally describe the occasions on which the RICO predicate acts of mail fraud and wire
14 fraud occurred, and how those acts were in furtherance of the scheme. Plaintiff describes this
15 below.

16 174. The Defendants' use of the U.S. mails and interstate wire facilities to perpetrate
17 the scheme involved thousands of communications throughout the Class Period including
18 telephone, email and U.S. Mail communications to brokers regarding the blacklisting of the
19 appraisers appearing on the Field Review List or who were to be outed by Countrywide and/or
20 LandSafe; the transmission by email and/or U.S. mail of appraisals prepared by appraisers who
21 did not appear on the Field Review List or "out list" and the use of fraudulent HUD-1 forms to
22 complete transactions. In addition to these RICO predicate acts, it was foreseeable to each
23 Defendant that it would communicate with the brokers by the U.S. mails and by interstate wire
24 facilities. Further, each Defendant has, in furtherance of the scheme, communicated through use
25 of the U.S. mails and by interstate wire facilities with their various local offices or divisions.
26

C. Conduct of the RICO Enterprises' Affairs

175. During the Class Period, the Defendants have exerted control over the Enterprises and, in violation of Section 1962(c) of RICO, the Defendants have conducted or participated in the conduct of the affairs of those RICO Enterprises, directly or indirectly by controlling which appraisals it would accept to qualify a loan. The brokers accepted the Defendants' control over appraiser choice so that the brokers would get the loan approved and receive their commission on the origination of the loan. LandSafe followed Countrywide's directives as to which appraisers to target.

176. The Enterprises had a hierarchical decision-making structure headed by Countrywide. Countrywide created and distributed the Field Review List and/or issued instructions on which appraisals that it would accept.

D. The Defendants' Pattern of Racketeering Activity

177. Each of the Defendants conducted and participated in the affairs of the above-referenced Enterprises through a pattern of racketeering activity, including acts that are indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343, relating to wire fraud. The Defendants' pattern of racketeering likely involved thousands of separate instances of use of the U.S. mails or interstate wire facilities in furtherance of their scheme. Each of these fraudulent mailings and interstate wire transmissions constitutes a "racketeering activity" within the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern of racketeering activity," within the meaning of 18 U.S.C. § 1961(5), in which the Defendants intended to defraud Plaintiff, the members of the Class and other intended victims.

178. The Defendants' racketeering activities amounted to a common course of conduct, with similar pattern and purpose, intended to exclude impartial and objective appraisers, that is, Plaintiff and members of the Class. Each separate use of the U.S. mails and/or interstate wire facilities employed by the Defendants was related, had similar intended purposes, involved similar participants and methods of execution, and had the same results affecting the same



1 victims, including Plaintiff and members of the Class. Each Defendant has engaged in the
 2 pattern of racketeering activity for the purpose of conducting the ongoing business affairs of the
 3 Enterprises.

4 **E. Damages Caused by the Defendants' Scheme**

5 179. The Defendants' violations of federal law and their pattern of racketeering
 6 activity have directly and proximately caused Plaintiff and members of the Class to be injured in
 7 their business or property because Plaintiff and members of the Class have lost a substantial
 8 amount of business by being excluded from preparing appraisals on real estate transactions
 9 where Countrywide is the lender or potential buyer of the paper.

10 180. Under the provisions of Section 1964(c) of RICO, the Defendants are jointly and
 11 severally liable to Plaintiff and members of the Class for three times the damages that Plaintiff
 12 and the Class members have sustained, plus the costs of bringing this suit, including reasonable
 13 attorneys' fees.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF AND CONSPIRACY TO VIOLATE**
 16 **COMMON LAW DUTY TO PROVIDE FAIR PROCEDURES**

17 **AGAINST COUNTRYWIDE AND BANK OF AMERICA**

18 181. Plaintiff, on behalf of itself and all others similarly situated, realleges and
 19 incorporates herein by reference each of the allegations contained in the preceding paragraphs of
 20 this Complaint.

21 182. This cause of action for violation of the common law duty to provide fair
 22 procedures, and for conspiracy to violate the common law duty to provide fair procedures, is
 23 asserted against the Defendants on behalf of Plaintiff and the Class.

24 183. Defendant Countrywide is headquartered in the State of California. On
 25 information and belief, the actions and underlying decisions of Defendants alleged herein
 26 emanated from and occurred within the State of California. Decisions regarding which



1 appraisers would be excluded and the review of any objections raised by an appraiser was
 2 conducted at, among other places, in Countrywide's offices in West Lake Village. Emails and
 3 telephone calls implementing the Scheme emanated from West Lake Village. California law
 4 applies to the claims of Plaintiff and all Class members because the State of California has an
 5 overriding interest in regulating the conduct of Defendants. Countrywide planned and
 6 implemented its wrongful scheme in California, and many of the wrongful acts emanated from
 7 its California offices.

8 184. California Civil Code section 1090.5(a) states, "No person with an interest in a
 9 real estate transaction involving an appraisal shall improperly influence or attempt to improperly
 10 influence, through coercion, extortion, or bribery, the development, reporting, result, or review
 11 of a real estate appraisal sought in connection with a mortgage loan." Further, section 1090.5(c)
 12 states, "If a person who violates this section is licensed under any state licensing law and the
 13 violation occurs within the course and scope of the person's duties as a licensee, the violation
 14 shall be deemed a violation of that state licensing law."

15 185. Moreover, in a notice dated February 4, 2009, California's Department of
 16 Financial Institutions stated, "It is the jointly held intention of the Commissioners of the
 17 Department of Real Estate (DRE), the Department of Corporations (DOC), the Department of
 18 Financial Institutions (DFI), as well as the Director of the Office of Real Estate Appraisers
 19 (OREA), to provide outreach to their respective licensees for the purpose of informing those
 20 licensees that the following acts may constitute evidence of a violation of California law, and
 21 Civil Code section 1090.5 in particular, and should be avoided when engaging the services of a
 22 licensed real estate appraiser." The notice then states that the unlawful acts include "allowing
 23 the removal of an appraiser from a list of qualified appraisers, or the addition of an appraiser to
 24 an exclusionary list of disapproved appraisers, used by any entity, *without prior written notice to*
 25 *such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a*
 26 *violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or state*



1 *licensing standards, substandard performance, improper or unprofessional behavior or other*
 2 *substantive reason for removal.”* The notice further states that its list of acts violating Civil
 3 Code section 1090.5 is “intended to alert licensees of practices that could potentially lead to
 4 disciplinary action.” The notice describes behavior that violates California law before or after
 5 the date it was issued. Thus, because Countrywide is licensed in California by the Department of
 6 Financial Institutions, removing appraisers without giving prior notice violates section 1090.5(a)
 7 and constitutes a violation of the state licensing laws.

8 186. FHA and HUD have recently reaffirmed that appraisers cannot be placed on an
 9 exclusory list without written notice and evidence of USPAP violations:

10 **HUD MORTGAGEE LETTER SYNOPSIS FROM ALL REGS**

11 **FHA Reaffirms Appraiser Independence (ML 2009-28)**

12 Notable Date:

13 Case numbers assigned on or after January 1, 2010

14 **Industry Participants Affected**

15 All FHA Approved Lenders and FHA Roster Appraisers

16 **Synopsis**

17 This mortgagee letter provides guidance to prevent
 18 improper influence on appraisers during the appraisal
 19 process. The letter affirms existing requirements and
 20 introduces new requirements that are similar to HVCC
 (Home Value Code of Conduct) requirements. Key
 guidelines follow:

21 ***

- 22 • Lenders are reminded that they cannot add an appraiser
 23 to an exclusionary list without written notice and
 evidence of USPAP (Uniformed Standards of
 Professional Appraisal Practices) violations.

24 187. On September 18, 2009, HUD again reaffirmed that existing law prohibited
 25 safeguards to isolate its collateral evaluation process from influence or interference from its loan
 26 production process:

1 FHA is reaffirming these requirements. Mortgagees and third
2 parties working on behalf of mortgagees are prohibited from:

3 When FHA transitioned from rotational assignment of
4 appraisers to "Lender Select," Mortgagee Letter 1994-54
5 was issued to advise of the necessity for appraisal
6 independence. Mortgagee Letter 1994-54 prohibited loan
7 officers and loan production staff from supervising or
8 directing appraisers and prescribed penalties for
9 mortgagees that unduly influenced or pressured appraisers.
10 Subsequent Mortgage Letters enhanced the importance of
11 appraiser independence, and clarified and supplemented
Mortgagee Letter 1994-54. In Mortgagee Letter 1996-26,
FHA directed that the mortgagee and the appraiser avoid
even the appearance of a conflict of interest, which would
include providing the appraiser with anything of value in
consideration of returning the appraisal at a given value.
With the release of Mortgagee Letter 1997-45, FHA
instructed mortgagees that they may not condition
continued selection of an appraiser on inflating values or
disregarding repair requirements.

- 12 • Withholding or threatening to withhold timely payment
13 or partial payment for an appraisal report.
- 14 • Withholding or threatening to withhold future business
15 for an appraiser, or demoting or terminating or
16 threatening to demote or terminate an appraiser.
- 17 • Expressly or impliedly promising future business,
18 promotions or increased compensation for an appraiser.
- 19 • Conditioning the ordering of an appraisal report or the
20 payment of an appraisal fee or salary or bonus on the
21 opinion, conclusion or valuation to be reached, or on a
22 preliminary value estimate requested from an appraiser.
- 23 • Requesting that an appraiser provide an estimated,
24 predetermined or desired valuation in an appraisal
25 report prior to the completion of the appraisal report, or
26 requesting that an appraiser provide estimated values or
comparable sales at any time prior to the appraiser's
completion of an appraisal report.
- Providing to the appraiser an anticipated, estimated,
encouraged or desired value for a subject property or a
proposed or target amount to be loaned to the borrower,
except that a copy of the sales contract for purchase
must be provided.



- Providing to the appraiser, appraisal company, appraisal management company or any entity or person related to the appraiser, appraisal company or management company, stock or other financial or non-financial benefits.
- **Allowing the removal of an appraiser from a list of qualified appraisers or the addition of an appraiser to an exclusionary list of qualified appraisers, used by any entity, without prompt written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards, improper or unprofessional behavior or other substantive reason for removal.**
- Any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality or violates law or regulation, including, but not limited to: the Truth in Lending Act (TILA) and Regulation Z and USPAP.

188. Defendants' failure to give any notice or to give meaningful notice to an appraiser who is removed from the list of approved appraisers, and to give the appraiser the opportunity to challenge that action and to seek relief from that action, deprives appraisers of fair procedures that are necessary to protect them from potentially devastating economic harm.

189. As described above, Mr. Massey was removed from the list of approved appraisers or placed on a blacklist or both without adequate notice as required by law and without being provided fair procedures. Other appraisers received no notice of being placed on the list and only learned after the fact from third parties.

190. Similarly, all members of the Class were removed from Defendants' list of approved appraisers or placed on a blacklist or both either without fair notice and/or without otherwise being provided fair procedures to know why they were removed and to seek relief from their removal. Thus, Defendants are liable for violating the common law duty to provide fair procedures and for conspiring to violate that duty.

191. Bank of America, without notice and any opportunity to have a fair hearing, has simply adopted Countrywide's list and thus ratified Countrywide's wrongful acts. Countrywide representative Devin Fahrner testified that there were no significant changes in practice when Bank of America acquired Countrywide and that the two companies conducted business very similarly. Fahrner Dep. at 75.

192. Defendants' unlawful conduct has directly and proximately caused Plaintiff and members of the Class to be injured in that they have lost a substantial amount of business by being excluded from the list of approved appraisers without being provided fair procedures. In addition, Plaintiff seeks an injunction requiring Defendants to cease their wrongful conduct.

193. The acts and omissions of Defendants alleged herein were intended to cause injury to Plaintiff and the Class members and constitute despicable conduct carried on by Defendants with a willful and conscious disregards of the rights of Plaintiff and the Class members, thus constituting malice within the meaning of California Civil Code § 3294(c)(1). The acts and omissions of Defendants alleged herein also subjected Plaintiff and the Class members to cruel and unjust hardship in conscious disregard of their rights, thus constituting oppression within the meaning of Civil Code § 3294(c)(2). As a result, Plaintiff and the Class members are entitled to an award of punitive damages.

THIRD CAUSE OF ACTION

INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE AGAINST COUNTRYWIDE

194. Plaintiff, on behalf of itself and all others similarly situated, realleges and incorporates herein by reference each of the allegations contained in the preceding paragraphs of this Complaint.

195. This cause of action, which alleges interference with prospective economic advantage, is asserted on behalf of the Class.



1 196. California law applies to the claims of Plaintiff and all Class members, because
2 Countrywide has its headquarters in California. Defendants planned and implemented their
3 wrongful scheme in California, which thus has an overriding interest in regulating the conduct of
4 Defendants.

5 197. The mortgage brokers that Mr. Massey had relationships with include Mortgage
6 Integrity, Home Mortgage Resources, Hunter Creek Mortgage, Clearwater Mortgage, New Line
7 Mortgage, Pathfinders Mortgage and American Home Key. Countrywide was aware the Plaintiff
8 and Massey had business relationships with each of these entities and that placing Massey on an
9 exclusion list would interfere and damage that relationship.

10 198. Plaintiff and all Class members have economic relationships with mortgage
11 brokers and mortgage lenders. Defendants knew about those relationships and intentionally and
12 successfully engaged in the conduct alleged in this Complaint for the purpose of disrupting those
13 relationships.

14 199. Defendants' interference is purposeful. It is the intent and objective of the
15 exclusionary program to interfere with Plaintiff and Class members' economic relationships with
16 mortgage brokers. Defendants communicate the blacklist status of appraisers to mortgage
17 brokers for the very purpose of ceasing these brokers from doing business with Plaintiff and
18 Class members.

19 200. Defendants' conduct is wrongful in that it either is part of a RICO violation, or
20 violates California law as set forth above.

21 201. In a sworn affidavit filed in this case, Dorothy Lim identified herself as the
22 Countrywide employee in charge of the blacklist and swore that "I did not have direct
23 communications with mortgage brokers about it." Dkt. No. 46. This sworn statement was
24 misleading because Countrywide posts the list on a database and provides mortgage brokers with
25 a password to have access to the blacklist. Former Countrywide Wholesale Account Executive
26 Devin Fahrner stated under oath that he was told by a Countrywide employee in California that

1 Wade Massey had been placed on the Unacceptable Vendor List. The purpose of sending the list
2 to mortgage brokers is to interfere with a broker's use of blacklisted appraisers.

3 202. Countrywide knows that the mortgage brokers who do business with Massey will
4 see his exclusion and cease doing business with him.

5 203. Defendants' unlawful conduct has directly and proximately caused Plaintiff and
6 members of the Class to be injured in their business or property because Plaintiff and members
7 of the Class have lost a substantial amount of business by being excluded from preparing
8 appraisals on real estate transactions where Countrywide is the lender or potential buyer of the
9 paper.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

12 A. Determining that this action is a proper class action and designating Plaintiff as
13 representative of the Class under Rule 23 of the Federal Rules of Civil Procedure;

14 B. Awarding compensatory damages in favor of Plaintiff and the Class members
15 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'
16 wrongdoing, in an amount to be proven at trial, including interest thereon;

17 C. Awarding treble damages;

18 D. Entering an injunction barring Defendants from engaging in the unlawful conduct
19 alleged herein;

20 E. Awarding Plaintiff and the Class members their reasonable costs and expenses
21 incurred in this action, including counsel fees and expert fees; and

22 F. Such other and further relief as the Court may deem just and proper.
23
24
25
26

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(a), Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: December 4, 2009.

HAGENS BERMAN SOBOL SHAPIRO LLP

By s/ Steve W. Berman

Steve W. Berman, WSBA #12536

Thomas E. Loeser, WSBA #38701

Ari Brown, WSBA #29570

Genessa Stout, WSBA #38410

1301 Fifth Avenue, Suite 2900

Seattle, Washington 98101

Telephone: (206) 623-7292

Facsimile: (206) 623-0594

steve@hbsslaw.com

toml@hbsslaw.com

ari@hbsslaw.com

genessa@hbsslaw.com

Raymond D. Schild

10280 W. Ustick Road

Boise, Idaho 83704

Telephone: (208) 672-1616

Facsimile: (208) 672-1901

rschild@fiberpipe.net

Attorneys for Plaintiff and the proposed Class



CERTIFICATE OF SERVICE

On December 4, 2009, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following attorneys of record:

- **Steve W. Berman**
steve@hbsslaw.com, heatherw@hbsslaw.com
- **Ari Y. Brown**
ari@hbsslaw.com, dawn@hbsslaw.com
- **Brooks R. Brown**
bbrown@goodwinprocter.com, rbader@goodwinprocter.com,
scrobinson@goodwinprocter.com, casesonline-CA@goodwinprocter.com
- **John S. Devlin , III**
devlinj@lanepowell.com, Docketing-SEA@LanePowell.com, burrusl@lanepowell.com
- **Thomas E. Loeser**
TomL@hbsslaw.com, dawn@hbsslaw.com
- **David L. Permut**
dpermut@goodwinprocter.com, rpolliard@goodwinprocter.com
- **Sallie F. Pullman**
spullman@goodwinprocter.com, rpolliard@goodwinprocter.com
- **D. Michael Reilly**
reillym@lanepowell.com, smithm@lanepowell.com
- **Raymond D. Schild**
rschild@fiberpipe.net
- **Genessa Ann Stout**
genessa@hbsslaw.com

Executed this 4th day of December, 2009, in Seattle, Washington.

HAGENS BERMAN SOBOL SHAPIRO LLP

By: s/ Steve W. Berman
Steve W. Berman, WSBA #12536